SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b))	
In re TOBACCO CASES II	Case No. JCCP No. 4042
This document relates to:	DEPOSITION OF
The People of the State of California, et al, v. Philip Morris Incorporated, et al., Los Angeles Superior Court Case No. BC 194217;	JOHN ZIKIAS
The People of the State of California, et al., v. General Cigar Co., et al, San Francisco Superior Court Case No. 996780;	
The People of the State of California, et al, v. Brown & Williamson, et al., San Francisco Superior Court Case No. 996781; and	
People of the State of California v. Tobacco Exporters, et al., San Francisco Superior Court, Case No. 301631	
SERVICE LIST "B"	

TAKEN ON: Tuesday, April 25, 2000

TAKEN AT: 2550 Fifth Avenue, Ninth Floor
San Diego, California

REPORTED BY: CYNTHIA DEPWEG
CSR NO. 3280
RPR NO. 036984

APPEARANCES:

FOR THE PLAINTIFFS:
THORSNES, BARTOLOTTA, MCGUIRE & PADILLA
2550 Fifth Avenue, Suite 1100
San Diego, California 92103
BY: JOHN F. McGUIRE, ESQ.

FOR LORILLARD TOBACCO COMPANY, et al.,:
GRAY CARY WARE & FREIDENRICH
401 B Street, Suite 1700
San Diego, California 92101
BY: BRIAN FOSTER, ESQ.
WILLIAM S. BOGGS, ESQ.
KATHRYN KRECKE, Attorney at Law

http://legacy.library.ucsf.edu/tid/hgq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/qqfl0001

FOR LIGGETT GROUP, INC.:
POST KIRBY NOONAN & SWEAT LLP
600 West Broadway, Suite 1100
San Diego, California 92101
BY: JEFFREY P. LENDRUM, ESQ.

Also present: Ms. Karen Frostrom

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San Diego, CA, Tuesday, April 25, 2000, 9:10 a.m.

JOHN ZIKIAS,
HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

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7 BY MR. McGUIRE:
8 Q. Sir, would you state your name and give us
9 your address for the record, please.
10 A. My name is John Zikias. Home address?
11 Q. Whatever is comfortable for you.
12 A. [DELETED]
13
14 Q. Is that home?
15 A. That's business.
16 Q. And do you live in Tempe?
17 A. No, I live in [DELETED].
18 Q. What do you do for a living?
19 A. I work for Circle K Stores, Inc. as the
20 assistant vice-president in field and category
21 marketing.
22 Q. Assistant vice-president of --
23 A. -- field and category marketing.
24 Q. Could you give me a little bit of your
25 background, training, and experience that led up to your
26 employment by Circle K?
27 A. Sure. Worked -- I have been working in
28 retail for roughly 20 years in various management

1 positions, worked for 7-11 stores, South, Incorporation
2 in the '80s, as a -- in the operations and then several
3 positions in marketing, from a sales manager through
4 category manager, through group category manager.
5 And then at Circle K stores in the '90s, I
6 was a region merchandise manager, field market developer
7 manager, category manager, and director of category
8 development, and then assistant vice-president of
9 category -- field marketing -- field and category
10 marketing.
11 Q. What's your educational background?
12 A. A year of college.
13 Q. I didn't mean to cut you off. Did I cut
14 you off or had you finished?
15 A. No, I finished.
16 Q. What is a category manager? What does
17 that person do, someone with that title?
18 A. At Circle K stores?
19 Q. Let me just -- is it something that is
20 generic to all types of marketing, or is it just used at
21 Circle K stores?
22 A. It -- in retail, it's used one way. In
23 manufacturing or in brand management, it might be used
24 another way.
25 Q. Okay. Then the answer to your question is
26 yes, with respect to Circle K?
27 A. Okay. Category manager would be
28 responsible for sales and gross profits of a particular

1 category, and that would include developing promotions,
2 product selection, pricing, strategic marketing plan,
3 schematics, equipment -- that's pretty much it.
4 Q. Have you been deposed before?
5 A. Yes, I have.
6 Q. How many times?
7 A. Three.
8 Q. In California?
9 A. No.
10 Q. Were any of these times that you were
11 deposed, were you deposed as a person most knowledgeable

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12 for Circle K stores?
13 A. No.
14 Q. When was the last time you were deposed?
15 A. To the best of my recollection, three
16 years ago.
17 Q. Generally, what did that lawsuit have to
18 do with?
19 A. It was a SEC investigation.
20 Q. Into who or what?
21 A. Trading of Circle K stock prior to the
22 acquisition by Tosco.
23 Q. Who is Tosca or Tosco?
24 A. Tosco is a -- Tosco is a corporation based
25 in Stanford, Connecticut.
26 Q. Is Tosco the parent corporation of
27 Circle K?
28 A. Not directly, no.

6

1 Q. Is Tosco the parent corporation of Tosco
2 Marketing, who is the parent corporation of Circle K?
3 A. I'm not exactly sure. There's -- I'm not
4 qualified to speak to exactly how that corporation is
5 set up.
6 Q. Okay. I understand that, and my question
7 is just for general familiarization. What do you
8 understand is the relationship, if any, between
9 Circle K, Inc. and Tosco Marketing?
10 A. There is a link. I'm not exactly sure
11 what the link is.
12 Q. Does Tosco represent that one of its
13 divisions is Circle K stores?
14 A. Yes.
15 Q. Do you from time to time or have you from
16 time to time met with or communicated in any way with
17 marketing personnel from Tosco?
18 A. No.
19 Q. Have you communicated or met with anyone
20 from Tosco Marketing?
21 A. I'm not sure how to answer that question.
22 Q. Okay. Where is Tosco Marketing home
23 based?
24 A. I mean --
25 MR. FOSTER: You're having trouble with this.
26 THE WITNESS: Yeah.
27 MR. FOSTER: Why don't you explain your
28 difficulty.

7

1 THE WITNESS: The difficulty is Tosco Marketing
2 company is not a legal corporation. Circle K Stores,
3 Inc. is the legal corporation. That's why I'm having
4 trouble answering that question.
5 BY MR. McGUIRE:
6 Q. Okay. When you say it's not a legal
7 corporation, you mean it doesn't have an Inc. after it.
8 It hasn't been incorporated in any state? Is that what
9 you --
10 A. Not that I am aware of. It's not been
11 incorporated in another state.
12 Q. Do you know that Circle K -- excuse me --
13 that Tosco represents that Tosco Marketing is one of its
14 divisions?
15 A. I do not know that.
16 Q. Tell me what you know about Tosco

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17 Marketing.
18 A. Tosco Marketing is a broad name that's
19 used inside the company to represent the convenient
20 store business and part of the gasoline business.
21 Q. Do you have any positions inside the
22 company with respect to the chain of command of Tosco
23 Marketing?
24 A. Could you rephrase that again? I'm sorry.
25 Q. Yes. Do you have a position or occupy a
26 position within the company that is within the chain of
27 command of Tosco Marketing?
28 A. Yes.

1 Q. What's that position?
2 A. Assistant vice-president of field and
3 category marketing.
4 Q. Okay. I asked you what category marketing
5 was, I believe. What is field marketing?
6 A. I believe you asked me what a category
7 manager was.
8 Q. Okay. You are field and category manager,
9 right?
10 A. Field and category marketing.
11 Q. Vice-president of field and category
12 marketing?
13 A. Yes, sir.
14 Q. What does the field portion of that refer
15 to?
16 A. The field portion refers to our region --
17 or Circle K regions. I have region merchandise managers
18 and staff. I'm also responsible for those areas as
19 well.
20 Q. How many regions are there?
21 A. There is now currently five as of today.
22 Q. What are they?
23 A. There is a Florida region, southern
24 region, Arizona region, a Southern California region,
25 and a northwest region.
26 Q. Do you have stores in Northern California?
27 Excuse me. Outlets.
28 A. We have stores in the -- I guess what

1 would be considered Northern California. I mean,
2 depends how far north you're talking about.
3 Q. San Francisco and north of San Francisco?
4 A. I do not believe we have anything north of
5 San Francisco anymore.
6 Q. Who is the assistant -- or who is the head
7 of the Southern California region for field and category
8 marketing?
9 A. I am.
10 Q. Who is below you that specializes in
11 marketing in the Southern California area, if anyone?
12 A. There is no one in that position anymore.
13 Q. Did there used to be someone there?
14 A. Yes, before we split the region.
15 Q. And you split the region into Southern
16 California and Arizona?
17 A. No. Southern California and northwest.
18 Q. And what does -- what areas is encompassed
19 by the northwest?
20 A. That would be from Bakersfield,
21 California, north through Oregon and Washington.

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22 Q. And who is the most senior person with
23 respect to field and category marketing for the
24 northwest region?
25 A. Me. Me.
26 Q. Who is your immediate subordinate?
27 A. There's no one in that position right now.
28 Q. Who is the past person in that position?

1 A. Jeff Haxel.
2 Q. How do you spell his last name?
3 A. H-a-x-e-l.
4 Q. What is Jeff -- or where did he live when
5 he was in that position?
6 A. [DELETED]
7 Q. Is he still with the company?
8 A. Yes.
9 Q. What does he do now?
10 A. He's the region operations director for
11 the northwest region.
12 Q. Is there a marketing manager for the
13 category of tobacco products for Circle K stores?
14 A. Yes.
15 Q. Who is that?
16 A. Mike Struble.
17 Q. Would you spell the last name, please.
18 A. S-t-r-u-b-l-e.
19 Q. Where is he located?
20 A. He's based in our Phoenix office, our
21 Tempe office.
22 Q. How long has he been with the company?
23 A. Just over three years.
24 Q. How long have you been with the company?
25 A. Just over seven years.
26 Q. What was the first position you held?
27 A. Director of -- category director for
28 beverages.

1 Q. Have you ever been the category director
2 for tobacco products?
3 A. No.
4 Q. Who --
5 A. May I add on that? Not at Tosco or
6 Circle K, I should say.
7 Q. When did Tosco acquire Circle K?
8 A. I believe 1996.
9 Q. Was there -- as a result of that
10 acquisition, was there any change in the way that
11 tobacco products were marketed in any of the Circle K
12 stores?
13 A. Could you ask the question again? I'm
14 sorry.
15 Q. Sure. After the acquisition in 1996, has
16 there been or was there any change in the way tobacco
17 products were marketed at Circle K stores?
18 A. Yes.
19 Q. Would you enumerate those changes for me?
20 MR. FOSTER: Can I ask for a clarification,
21 Mickey?
22 MR. McGUIRE: Sure.
23 MR. FOSTER: Are you talking at any time after
24 1996 or basically in 1996 as a consequence of the
25 acquisition?
26 MR. McGUIRE: I meant it to be a historical or

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27 chronological description, if it applied to changes that
28 were made over time or immediately. So it was a broad

1 question.
2 MR. FOSTER: All right.
3 BY MR. McGUIRE:
4 Q. Okay. Let me give you a little bit of a
5 ground rule here so you know the way we expect to do
6 things. First of all, I know you have been deposed
7 three times. You know that you're under oath. Correct?
8 A. Mm-hmm.
9 Q. "Yes"?
10 A. Yes.
11 Q. Okay. Rule No. 2 is you have to say "yes"
12 or "no," not "mm-hmm."
13 A. I'm sorry.
14 Q. Okay. Rule No. 3 is, when I ask you a
15 question, let the question sink in; then answer it. If
16 your attorney has a question or an objection or anything
17 like that to put on the record, allow him to do that.
18 When he's finished, unless he instructs you not to
19 answer the question, respond to the question. He will
20 not turn to you and say, "Okay. Not okay," but he will
21 say, "Don't answer that question, if that's what he
22 wants you to do." Okay?
23 A. Okay.
24 Q. So sometimes you won't be able to keep the
25 question in mind, because we will get involved in a
26 debate or discussion or whatever, and we will have to
27 repeat the question, which we can. But we would like to
28 avoid having to repeat every question, because we will

1 be here twice as long as we need to be. All right?
2 If I ask you a question and you don't
3 understand what I am asking you, just tell me you don't
4 understand or, like you did earlier, tell me, "I'm
5 having difficulty responding to that question," and we
6 will try and get to the point where you're answering
7 what I am asking, or as close as we can to that.
8 A. Mm-hmm.
9 Q. All right?
10 A. That's what I was trying to do.
11 Q. I understand. Okay.
12 All right now. Let's go back to the
13 question.
14 Could you enumerate for me the changes in
15 the marketing of tobacco products that occurred at
16 Circle K after the acquisition by Tosco in 1996?
17 A. Okay. In 1997, we developed a new
18 merchandising program for tobacco that changed some of
19 the fixturing that we had in stores, and that was a
20 result of trying to open up the stores more to replace
21 some bins that we had for tobacco products.
22 The -- at that time, we also, as far as
23 the change in the marketing practices, focused on
24 promotion of cartons versus packs or multipacks. So
25 most of our promotions were geared towards sales of
26 cartons of cigarettes.
27 I believe in the beginning of 1998 --
28 excuse me. This would have been in 1999. After the

1 Master Settlement Agreement, each of the tobacco
2 companies began offering promotional buy-down money that

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was used to offer promotional pricing to the consumer for various cigarettes, cigarette brands. Not all brands, but selected brands. And we used those funds to reduce our retail price of cigarettes.

In mid 1999, we developed a -- and began field testing a new tobacco fixture that removed all cigarettes and tobacco products from arms' reach of the consumer and put them all behind the sales counter, and that began rolling out in early 2000, in January of 2000.

Q. What was the motivation for this new tobacco fixture behind the sales counter?

A. To remove tobacco from access by underage consumers.

Q. Well, was Circle K selling tobacco to underage consumers prior to January of 2000?

A. No, we have a very strict policy not to do that.

Q. You know it's against the law in California?

A. Yes, sir.

Q. So were you finding, as a result of some research, that wherever you had the product before January of 2000 was conducive to shoplifting by minors?

A. We did not conduct any research on that, no.

Q. If your purpose was to remove tobacco from access by underage consumers, where was the tobacco before it was put behind the counter?

A. The cigarettes were -- some of it was behind the counter. Some of it was merchandised around our two registers on our sales counter.

Q. When you say "merchandised," what do you mean?

A. Displayed on fixtures.

Q. Are the fixtures provided by the tobacco industry or by Circle K?

A. By Circle K.

Q. Does the tobacco industry provide Circle K with its own stands for demonstration, or has it ever in your experience?

A. Yes, it has.

Q. Do they presently do that?

A. No.

Q. Do you advertise -- Circle K advertise Marlboro -- Marlboro catalog and Marlboro gear?

A. If the material is made available by the manufacturer and as part of a promotion, we would display that, yes.

Q. Do you know if Circle K stores in California as of today have Marlboro gear coupons that can be taken off a board and used to order Marlboro products?

A. I do not believe we have anything like

that today.

Q. What do you know -- You mentioned the MSA. What do you know about the MSA?

A. The Master Settlement Agreement, I have limited knowledge to the extent that it restricts how tobacco can be --

MR. FOSTER: Let me ask the witness to pause for

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8 a moment. I need to inquire, Counsel, as to the extent
9 that this involves attorney-client communications. So
10 let me pause for a second and take the witness outside.
11 MR. McGUIRE: Certainly.
12 (A recess was taken.)
13 BY MR. McGUIRE:
14 Q. The question was what do you know about
15 the MSA?
16 A. The MSA was signed between some major
17 tobacco companies and State Attorneys General in
18 November of 1998, and that it restricted or placed
19 restrictions on the tobacco companies on how they would
20 advertise their cigarette brands and had also -- and I
21 don't know the specifics of it, but had some stipulation
22 there on reducing the percentage of teenagers and
23 underage individuals that smoke.
24 Q. Do you have any other understandings of
25 that agreement as it relates to your business or
26 profession, which is the marketing of products through
27 Circle K outlets?
28 A. The only other piece would be our ability

1 to use tobacco company logos and the size -- the size
2 restrictions of those.
3 Q. What do you understand about a restriction
4 on your ability to use tobacco company logos?
5 A. If a sign is more than 14 square feet with
6 a specific brand logo, that is not in the spirit of the
7 agreement. It's my understanding that it doesn't
8 technically place restrictions on the retailer but on
9 the manufacturer to provide the use of the logo to the
10 retailer.
11 Q. Have any marketing devices been suggested
12 to you for use in Circle K stores by any manufacturer of
13 tobacco products that you have declined to use?
14 A. What do you mean by "devices"?
15 Q. 14-foot signs that have logos, Marlboro
16 man pictures, Joe Camel, NASCAR sponsorships with
17 tobacco companies.
18 A. Are you talking about signage?
19 Q. I'm talking -- well, I'm not in the
20 advertising business.
21 A. Okay.
22 Q. So I mean most of my questions to be very
23 broadly, and then I need you to tell me whether there's
24 a magic word like "signage" that will help us into -- I
25 was talking or I gave you examples about signage. So
26 let's talk about that, but I mean my question to be much
27 broader.
28 A. Okay.

1 Q. Has any type of marketing scheme, idea
2 been suggested to you by any member of the tobacco
3 industry which you declined on behalf of Circle K to
4 utilize in your stores?
5 A. Yes.
6 Q. Okay. Can you enumerate for me -- first
7 of all, how many times has that happened?
8 A. It's hard to say specifically over a
9 period of time. It's not that frequent. I would say
10 less than five.
11 Q. Same question, only I want to restrict
12 your answer for the period of time that commences

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13 December of 1998.
14 A. With the -- with the exception of signage,
15 we have not turned down anything since 1998.
16 Q. How many times have you turned down
17 signage, marketing requests since 1998?
18 A. I would not have a specific number.
19 Q. Give me a range then, if you can, please.
20 A. I can speak for how many times I have.
21 There might be other people in the organization that
22 have also declined to use point-of-sale materials or
23 signs that I would not be aware of. So I would speak to
24 my knowledge, which is less than five.
25 Q. Since 1998?
26 A. Mm-hmm.
27 Q. Can you give me some specifics? What do
28 you remember?

1 A. Philip Morris wanted us to use some
2 specific size signage on our display fixture behind the
3 sales counter. And it was not the appropriate size that
4 we wanted to use; so we declined it.
5 Q. When you say appropriate size, what do you
6 mean?
7 A. In our fixturing and in our merchandising,
8 we tend to focus on the product and not paste a lot of
9 signs around our store so it doesn't become cluttered-
10 looking. So if signs are larger than we deem
11 appropriate for the space that we have available, we
12 would not use them. And as a larger store, we tend to
13 produce most of our materials that we use for promotion
14 through a printing company that we pay.
15 Q. How big a sign did Philip Morris propose
16 to be used behind the counter?
17 A. I don't specifically recall.
18 Q. Who was it at Philip Morris that requested
19 this use?
20 A. Rodger Rolland.
21 Q. How do you spell his name?
22 A. R-o-d-g-e-r R-o-l-l-a-n-d.
23 Q. And what's his position with Philip
24 Morris, if you know?
25 A. He's vice-president of western region
26 sales.
27 Q. When did he make this request?
28 A. I don't recall specifically. Some time

1 last year.
2 Q. Where was the request made, over the
3 telephone or in person?
4 A. I do not recall.
5 Q. Have you ever attended any seminars put on
6 by Philip Morris or any other tobacco manufacturers?
7 A. Yes, I have.
8 Q. In the last -- since the MSA?
9 A. Yes, I have.
10 Q. What was the purpose of the seminars, as
11 you understood it?
12 A. To review sales and marketing of specific
13 brands for the company as well as industry sales and
14 marketing practices, information on youth, the
15 initiatives to reduce youth smoking by the tobacco
16 companies.
17 Q. Tell me about that.

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18 A. Philip Morris has a department that is
19 charged with providing information to youth about
20 tobacco and creating television commercials that have
21 been in -- you know, aired on major TV networks, and
22 they review that effort. They also talked about an
23 initiative that -- a donation they made in the 4H Club,
24 and they didn't get into specifics on what that was, but
25 to help with some of their youth programs to improve
26 self-esteem of youth.
27 Q. Is Rodger Rolland at Philip Morris someone
28 who you regularly interact with regarding marketing of

1 Philip Morris' cigarettes?
2 A. Yes.
3 Q. Have you ever declined a request from
4 Philip Morris with respect to signage or any other
5 marketing device on the -- in whole or in part because
6 you believe it violated the MSA?
7 A. No.
8 Q. We talked about one instance that you
9 remember. Can you tell me about the other ones?
10 A. Not -- not specifically. I have numerous
11 conversations with the folks at Philip Morris,
12 especially over the last year that we developed the
13 fixture. So I'm not avoiding the question, but we had
14 various communications about the size of the signs, the
15 signs that we wanted to use.
16 And mostly, the discussions centered
17 around our desire to how we wanted to present tobacco
18 inside of our stores, and so it was, at one time, almost
19 a two- or three-time-a-week conversation last summer
20 regarding signage or programs that we wanted to
21 institute in the stores. I'm sorry I'm being vague, but
22 we had that many conversations. It's hard to get
23 specific.
24 Q. I'm sorry. As a result of all of these
25 conversations, was a written document developed that
26 outlined what Circle K would be doing with respect to
27 the advertisement of tobacco products?
28 A. Yes.

1 Q. Did you produce that document to your
2 attorneys?
3 A. Yes.
4 MR. McGUIRE: Brian, do you know if that's one of
5 these documents?
6 MR. FOSTER: It's not.
7 MR. McGUIRE: Okay.
8 Q. What's the document called?
9 A. I believe it is a Philip Morris retail
10 leaders program.
11 Q. And who has possession of a copy of that
12 other than your attorneys?
13 A. We have a copy in our contract file in
14 Tempe, and I believe Philip Morris has a copy as well.
15 Q. Do you have similar types of documents
16 that describe the marketing effort that will be used in
17 Circle K stores with respect to other cigarette
18 manufacturers?
19 A. To a certain extent, yes.
20 Q. Who has possession of those documents?
21 A. We have a copy in our contract file, and a
22 copy was provided to the cigarette manufacturers.

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23 Q. Are you the custodian of that file?
24 A. Yes.
25 Q. Have you ever refused a marketing request
26 or a signage request or any type of marketing request --
27 I'll make it very general -- from any manufacturer on
28 the basis, in whole or in part, that you or the company

1 believed that it was in violation of either the letter
2 or the spirit of the MSA?
3 A. No.
4 Q. Is there an expert or someone that the
5 company looks to inhouse as an expert on the MSA and
6 what it means?
7 A. Yes.
8 Q. Who is that?
9 A. Myself and Mike Struble.
10 Q. Mike Struble, and he is the tobacco --
11 that you identified him as the -- he's in the Phoenix
12 office, and he is the -- your immediate subordinate on
13 the tobacco -- the marketing of tobacco products. Is
14 that correct?
15 A. No. He once -- he works for Glenn
16 Fleetwood, who is the director of category development.
17 Q. And what's Mr. Struble's title?
18 A. He's group manager of tobacco. Group
19 category manager of tobacco.
20 Q. What do you know about the MSA in order to
21 include yourself within the ambit of the persons that
22 may know the most about it?
23 A. Yes, sir.
24 Q. What have you done?
25 A. I'm sorry. Repeat the question.
26 Q. What have you done to familiarize yourself
27 with the MSA, what it means to the tobacco companies and
28 what it may mean to the retailing of tobacco products,

1 if anything?
2 A. I have reviewed the document in part.
3 Q. Have you asked for interpretation from the
4 tobacco industry as to what the document means?
5 A. Yes.
6 Q. Who did you ask?
7 A. I spoke with Ross Webster at Philip
8 Morris, who's the vice-president of national accounts.
9 I have also had discussions with Rodger Rolland. To the
10 best of my recollection, I also had a conversation with
11 Jim McGuire at R.J. Reynolds.
12 Q. How do you spell that?
13 A. M-c-G-u-i-r-e.
14 Q. The boys from the old country.
15 I'm sorry. What was his title?
16 A. Jim is the senior vice-president of sales.
17 Q. Of what company?
18 A. R.J. Reynolds.
19 Q. And Rolland is R.J. Reynolds, and Ross
20 Webster is also R.J. Reynolds?
21 A. No, sir. Rodger Rolland is Philip Morris.
22 Q. I'm sorry. You're right. You told me
23 that.
24 A. Ross Webster is Philip Morris.
25 Q. Anyone else?
26 A. We have also -- at the tobacco companies?
27 Q. Yes.

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28 A. Craig Johnson at Philip Morris.

1 Q. Do you know what his title is?
2 A. Senior vice-president of sales, and to the
3 best of my recollection, that's it. Of the tobacco
4 companies.
5 Q. Okay. Then you said, "We also," and you
6 were about to tell me something else that you did other
7 than get interpretations from the manufacturers'
8 representatives. What else have you done?
9 A. I have also had discussion with inhouse
10 counsel.
11 Q. Who is your inhouse counsel?
12 A. Kathy Krecke and Joel Sterrett.
13 Q. Anything else that you have done to
14 familiarize yourself with the agreement, what it means
15 or supposed to mean, the letter or the spirit of it?
16 A. No.
17 Q. Has the company taken any steps that would
18 change its -- changed its marketing approach because of
19 the MSA?
20 A. No.
21 Q. So you're pretty much marketing the same
22 way you marketed -- well, that's not fair. Maybe it is.
23 You told me you made some changes in marketing after
24 Tosco acquired you, but I think you also told me that
25 none of those changes related to the MSA. Is that
26 right?
27 A. That is correct.
28 Q. So you have marketed then the same way

1 before the MSA as you marketed after it?
2 A. Yes, sir.
3 Q. Who was it that determined that there
4 would be some effect on the sale of cigarettes to minors
5 by moving the cigarettes up and behind the counter as of
6 January 2000?
7 A. I did.
8 Q. What was your rationale as to how that
9 would help?
10 A. The rationale was that if we could remove
11 tobacco products from the sales counter, they would be
12 less accessible to everyone, and that would allow us to
13 present a full service program to our consumers. It
14 would also make it easier for our sales associates.
15 Q. How would it allow you to present a full
16 service program to your consumers?
17 A. Because each transaction would require
18 interaction with the consumer. They would have to ask
19 for a brand of product.
20 Q. For a brand of tobacco product?
21 A. Yes, sir.
22 Q. Is there anything else that you stock at
23 Circle K that you treat the same way?
24 A. It would vary by location.
25 Q. Well, what type of products are you
26 thinking of?
27 A. Alcohol, health and beauty care items,
28 film, batteries. That's it.

1 Q. That's it?
2 A. I'm sorry. That's it.
3 Q. Have you placed any warnings at any of

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4 your locations regarding the use of any of the products
5 you sell?
6 A. Yes, sir.
7 Q. What warnings do you place -- excuse me.
8 What products are involved in the warnings?
9 A. Soft drinks, sandwiches, tobacco products,
10 alcohol. I believe that's it.
11 Q. How about gasoline?
12 A. Gasoline is not sold inside the store.
13 Q. Do you have -- you sell gasoline at
14 Circle K?
15 A. Yes, sir.
16 Q. And is the Union 76 gas stations also part
17 of the same company?
18 A. They're not part of Circle K stores; I do
19 not believe.
20 Q. They're part of Tosco or a division of
21 Tosco. Is that right?
22 A. Yes.
23 Q. Same as Circle K is a division, correct?
24 A. I believe so, yes.
25 Q. What type of warnings do you have outside
26 the store regarding the use of gasoline?
27 A. I'm not familiar with all of the warnings
28 on gasoline. I'm not responsible for gasoline

1 marketing.
2 Q. What type of warnings do you have
3 regarding sandwiches?
4 A. Microwave oven use.
5 Q. Something like what? I mean not word for
6 word.
7 A. I guess there's a situation where
8 microwaves can impact pacemakers. So there's a warning
9 on or near the microwave sandwich area that informs
10 consumers of that.
11 Q. How long have you had that warning?
12 A. In the State of California?
13 Q. Yes, sir.
14 A. I'm not exactly sure.
15 Q. Is that something that was implemented
16 while you were in your position as the vice-president?
17 A. I believe it was before that time.
18 Q. Why was the warning put up?
19 A. I'm not sure, but I believe it was before
20 my time.
21 Q. Same question with respect to soft drinks.
22 What types of warnings do you have regarding soft
23 drinks?
24 A. Sodium saccharine.
25 Q. Sodium saccharine, what do you tell
26 everybody about those things?
27 A. Again, not word for word, but that the --
28 that in laboratory animals, sodium saccharine has been

1 known to cause cancer.
2 Q. On what do you base that warning on?
3 A. We were required -- I'm not sure by which
4 U.S. government agency, but we were required by U.S.
5 government agencies after some tests were done, and I'm
6 not exactly sure when they had to post the warnings.
7 Q. Did you know about any relationship
8 between sodium and saccharine and cancer in laboratory

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9 animals before the U.S. agency required you to put the
10 warning up? By "you," I mean Circle K or Tosco.
11 A. I believe that was before the time that I
12 was responsible for that area as well as Tosco owning
13 Circle K. I'm not exactly sure when that information
14 was made available to the general public.
15 Q. Does Tosco have a community relations
16 program?
17 A. I'm sorry. Could you restate the question
18 again?
19 Q. Yes. Does Tosco have a community
20 relations program?
21 A. Tosco?
22 Q. Yes, sir.
23 A. I believe in some of the refineries, they
24 do, yes. We have a public relations department. Tosco
25 has a public relations department.
26 Q. What type of warnings does Circle K give
27 regarding tobacco products?
28 A. We post the Surgeon General's warning. As

1 well as in California, the required warnings based on
2 Proposition 65.
3 Q. Do you only post what's required?
4 A. As far as warnings?
5 Q. Yes, sir.
6 A. Yes, sir.
7 Q. Why is that?
8 A. We market products. We don't manufacture
9 or do research into what is in specific products. So we
10 don't have the expertise to make any other claims.
11 MR. FOSTER: Counsel, can we pause for a second,
12 just to have a refreshing break here?
13 MR. McGUIRE: Yes, sir.
14 MR. FOSTER: Thank you.
15 (A recess was taken.)
16 BY MR. McGUIRE:
17 Q. I want to talk a little bit about the
18 promotional buy-down money that Circle K received in
19 1999. That was one of the marketing devices that you
20 indicated took place after the MSA was in effect.
21 Correct?
22 A. Yes, sir.
23 Q. So tell me what that program is about.
24 What is a promotional buy-down?
25 A. The tobacco manufacturers from time to
26 time will want to promote their products at a lower --
27 or specific brands at a lower than everyday retail
28 price; and to do that, they offer retailers, who

1 participate in their merchandising programs, funds to do
2 that with, that have to be directly passed to the
3 consumer.
4 Q. What do you mean they have to be passed
5 directly to the consumer? In other words, they give you
6 money, but you have to take that off the price of the
7 cigarettes?
8 A. Yes, sir.
9 Q. That's how you pass it on to the consumer?
10 A. Yes, sir.
11 Q. Do they tell you how you have to do that?
12 A. No.
13 Q. Can you use promotional buy-down money to

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14 promote the sale of cartons as opposed to packs?
15 A. Yes.
16 Q. So you can use the money to increase the
17 number of cigarettes that are sold?
18 A. Yes.
19 Q. Do you use the promotional buy-down money
20 universally across all of the stores, or is this device
21 used in particular stores or regions?
22 A. It would be used in all the stores.
23 Q. Have you ever participated in a
24 promotional buy-down that was directed towards specific
25 locations or neighborhoods, communities?
26 A. Not that lower level, no.
27 Q. When you say, "not that lower level," what
28 do you mean?

1 A. It would not be down to, say, a community
2 level. It could be a region level.
3 Q. Have you ever participated in a tobacco
4 marketing device that was aimed at lowering the price of
5 cigarettes in low income neighborhoods?
6 A. Not specifically, no.
7 Q. Let me turn it around, the converse. Have
8 you ever participated in a marketing device that raised
9 the price of cigarettes in high income neighborhoods?
10 A. No.
11 Q. Do you get to -- by "you," again, this is
12 all Circle K -- do you get to fix the price of the
13 product?
14 A. Yes.
15 Q. What's your profit margin on a pack of
16 cigarettes today?
17 A. That would vary by area of the country.
18 Q. Can you give me a range?
19 A. Profit margin?
20 Q. Yes, sir.
21 A. Roughly across -- on a pack or the
22 category in general?
23 Q. I guess I would understand it better on a
24 pack, and then you can tell me how you relate that to a
25 category in general.
26 A. Okay. On a pack, it would be roughly 28
27 to 32 percent profit -- gross profit margin.
28 Q. And is that how you would normally relate

1 to this particular product on a pack basis? Or you, as
2 a marketer, would you be thinking of a different
3 division of it?
4 A. As a marketer, we look at the category
5 performance and the gross profit of the category that is
6 a result of the component sold within the category.
7 Q. Okay. So let me ask you. What's your
8 profit margin on the category of tobacco?
9 A. Roughly 20 percent.
10 Q. Has that been consistent for the last
11 seven years?
12 A. No, it is not.
13 Q. How does it change?
14 A. It has gone down.
15 Q. So it's presently 20 percent?
16 A. Yes, sir.
17 Q. And you call that gross profit?
18 A. Gross profit margin.

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19 Q. What's the difference between a gross
20 profit margin and a gross profit?
21 A. It's a component. I just want to be clear
22 on your question. Because if you asked me gross profit
23 dollars, that would be different than gross profit
24 margin.
25 Q. I had that feeling, but I didn't know that
26 until you just helped me on that, but -- so tell me what
27 is a margin. Does it mean to express the profit in
28 percentage as opposed to dollars?

1 A. Yes, sir.
2 Q. What's your profit in terms of dollars or
3 cents with respect to a pack of cigarettes today, a
4 range, if you don't have --
5 A. I'm going to give you a very broad range,
6 because we operate in a number of different states and
7 the taxes vary widely, and that's going to impact our
8 retail prices as well as our gross profit.
9 Q. Let me ask you then to focus in on
10 California.
11 A. Okay. California, we would roughly
12 make -- again, this is an average and rough --
13 approximately fifty cents a pack, gross profit dollars.
14 Q. Okay. What's your gross profit in dollars
15 for the category of tobacco products in California?
16 A. For the whole category?
17 Q. Yes, sir.
18 A. I do not know that number off the top of
19 my head.
20 Q. When you talk about gross profit, what
21 is -- define that for me.
22 A. Gross profit of the category?
23 Q. Yes, sir.
24 A. Gross profit in the category would be the
25 retail sales, or the way we would measure it would be
26 the retail purchases of all tobacco products or
27 cigarette products, less the cost of goods that we pay
28 to our wholesaler, plus any buy-down and promotional

1 monies received, less any reduction to the sale -- or to
2 the retail price of product at the point of sale.
3 Q. What do you attribute -- or to what do you
4 attribute the decline in the gross profit margin of
5 cigarettes?
6 A. The increase in retail price.
7 Q. And has there been an increase in
8 wholesale price that is a large component, if not the
9 only component, for the increase in retail price?
10 A. Our -- can you rephrase that question into
11 one question?
12 Q. To what -- I will change the question a
13 little bit.
14 A. Okay.
15 Q. To what do you attribute the increase in
16 retail price?
17 A. The increase at retail price of our
18 competitors.
19 Q. Well, maybe I'm not understanding. Tell
20 me where I go wrong on this.
21 A. Okay.
22 Q. You're not -- your margin of profit has
23 gone down --

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24 A. Mm-hmm.
25 Q. -- because the cost of the cigarettes have
26 gone up.
27 A. No, because the retail of the products has
28 gone up.

1 Q. Well, when I say cost to the consumers, is
2 it the same as the retail price?
3 A. Yes.
4 Q. Okay.
5 A. Okay.
6 Q. So the profit margin has gone down because
7 the retail price has gone up?
8 A. Yes, sir.
9 Q. And the retail price has gone up because
10 your competitor's retail price has gone up?
11 A. That's correct.
12 Q. Why, if you're getting less of a profit
13 margin, why are you following what your competitor is
14 doing?
15 MR. FOSTER: Let me interject. I have given you
16 a little latitude. I'm willing to give you a little bit
17 more, because this is not a noticed subject of this
18 deposition today, and I don't know that you have the
19 right deponent here for these questions in the first
20 place. So -- a little bit more latitude, but then I'm
21 going to request that we move on.
22 BY MR. McGUIRE:
23 Q. Okay. Do you want me to repeat the
24 question?
25 A. Yes, please.
26 Q. Okay. Why, if you're getting less of a
27 profit margin, are you following what your competitor is
28 doing?

1 A. To remain competitive in the marketplace.
2 Q. If you --
3 A. May I add something that might help you?
4 Q. Yes.
5 A. The gross profit margin is a purely
6 mathematical computation. So, as such, if you make the
7 same profit dollars but the retail price is higher, your
8 margin percent will decline. So margin is purely a
9 mathematical computation.
10 Q. So what has -- well, I asked you this
11 before, and I guess I'm still not understanding. I
12 asked you what caused the profit margin to go down. You
13 said your competition had raised its prices.
14 A. And we have raised our prices.
15 Q. Did you, by raising your prices, did the
16 number or the amount of packs, cigarettes, category of
17 cigarettes decline?
18 A. In retail dollars or units?
19 Q. Either one.
20 A. The increase in retail dollars because of
21 inflation. In some areas, they declined, because of the
22 units actually did decline.
23 Q. Who do you consider your competitors?
24 A. In California?
25 Q. Yes. As you answered that question
26 before.
27 A. In California, it would be supermarkets
28 such as Vons or Ralph's or Lucky's and other convenient

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stores, such as AM/PM and 7-11. It would be geographically driven, and then others would be cigarette outlets.

Q. Has Circle K, while you have been associated with them, ever voluntarily placed any type of warning or informational material in its outlets regarding any of the products that it markets?

A. To the best of my belief, no.

Q. Has the company ever made any representations to the effect that it is concerned with the health and safety issues in the community and that it is prepared to back up that concern with dollars and time and effort?

A. Can you restate the question again, please. I'm sorry. The interruption.

Q. Let me just take a time out for a second, and let me find out what they're doing over there.

(A recess was taken.)

BY MR. McGUIRE:

Q. I think you said --

Has the company ever made any representations to the effect that it is concerned with the health and safety issues that may appear in the community or come to the attention of the community and is prepared to back up that concern with dollars, time, and effort?

MR. FOSTER: I object, because it's compound. I'm going to instruct you not to answer it.

MR. McGUIRE: How would you like me to take that apart?

MR. FOSTER: Put a question mark after health and safety issues that may appear in the community. Let's move on from there.

BY MR. McGUIRE:

Q. Okay. Has the company ever made any representations to the effect that it is concerned with health and safety issues that affect the community in which its stores are located?

A. Not that I am aware of.

Q. Has it ever made a representation that it is prepared to back up a concern with issues involving the environment or health and safety with dollars, time, and effort?

A. Not that I am aware of.

Q. Has the company ever made any representations that you are aware of that would cause the receiver of these representations to believe that the company was concerned with the health and safety of their customers and would voluntarily warn them of any dangers associated with products it sold?

A. No.

Q. Have you ever visited the Tosco web site?

A. Yes.

Q. Do you know what that web site says about community relations?

A. Not specifically, no.

Q. Exhibit 4000 for identification.

(Plaintiffs' Exhibit No. 4000 was marked.)

MR. McGUIRE: Why don't you show that to Mr. Foster there first.

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5 Q. This document purports to be a copy of
6 part of the Tosco web page entitled Community Relations.
7 I would like you to read -- well, I will read into the
8 record the following portion, "Through our national
9 retail network of Union 76 gasoline stations and
10 Circle K convenient stores, we contribute time, energy
11 and financial resources to the neighborhoods where we
12 operate. Our commitment to the community extends to
13 education, safety, health/human services, the
14 environment, and the arts/humanities." Is this the
15 first time that you have seen this profession of concern
16 with the community on behalf of Tosco?
17 A. Yes.
18 Q. When you visited the Tosco web site in the
19 past, did you miss this or do you know whether this was
20 recently put on the web site?
21 A. I do not know if it was recently put on
22 the web site.
23 Q. Do you agree with me that someone reading
24 this would conclude that the company was concerned with
25 the community, such that it would voluntarily warn of
26 dangers or risks associated with the sale and use of
27 products it sells?
28 MR. FOSTER: I'm going to object on a number of

1 grounds. No. 1, the question is ambiguous in its use of
2 the phrase, the company. The company that is the
3 defendant in this lawsuit is Circle K stores. You're
4 showing us a printout of a portion of the web site for
5 Tosco, which is not a defendant in this lawsuit.
6 Secondly, the scope of the question goes
7 beyond the noticed subject matter for this deposition,
8 and this witness has neither been designated and, in all
9 likelihood, not qualified to speak for the corporation
10 on these issues. And so at least with respect to these
11 issues, it should be clear on the record that anything
12 this witness has to say is his own personal
13 understanding based upon what he has heard and seen.
14 Third, I think it's also -- departs from
15 the scope of the deposition. It's just too far afield.
16 And so -- you know, I will let you proceed a bit
17 further. And also calls for speculation. And so we
18 will go a bit further, but then I'm going to truncate
19 this line of questioning.
20 BY MR. McGUIRE:
21 Q. Okay. Do you have the question in mind?
22 A. No, I do not. Would you please repeat it?
23 MR. McGUIRE: Would you do that for us.
24 (The last question was read back.)
25 MR. FOSTER: I actually do need a clarification
26 there, as to whether we're talking about Circle K or
27 Tosco when you say, "the company."
28 MR. McGUIRE: I'm talking about both. So to the

1 extent that this witness can only answer for Circle K.
2 MR. FOSTER: Okay. Then the question is compound
3 also. Excuse me.
4 BY MR. McGUIRE:
5 Q. I think you can answer.
6 A. It is possible, yes.
7 Q. Has Circle K ever considered voluntarily
8 warning about the risks of environmental tobacco smoke?
9 A. Not that I am aware of, no.

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10 Q. Why not?
11 A. We do not conduct research or have
12 information on the effects or understanding of what
13 exactly environmental tobacco smoke is, and thus we're
14 not qualified to make representations.
15 Q. Why hasn't the company used any time or
16 money or effort to investigate about the risks of
17 environmental tobacco smoke?
18 A. That's outside of the bounds of what we do
19 as a retailer.
20 Q. Who determined that, that it's outside the
21 bounds?
22 A. I would have made the final decision on
23 that.
24 Q. Has any of your superiors been informed of
25 your opinion -- or decision, rather, that it is beyond
26 what Circle K does to warn of the risks of environmental
27 tobacco smoke?
28 A. It has not been discussed.

1 Q. Who did you discuss, other than your
2 attorneys and other than inhouse counsel, the fact that
3 you were going to be deposed today?
4 A. My wife, my immediate superior.
5 Q. Who is that?
6 A. Jim McKenna. And Mark Harper, who was my
7 former superior one year, when the case first started.
8 Q. Where is Mr. McKenna? Where does he
9 reside?
10 A. He's in the process of relocating to
11 [DELETED].
12 Q. Where does he live now?
13 A. He is temporarily living in [DELETED].
14 Q. What is his position with the company?
15 A. Vice-president of marketing.
16 Q. And Mark Harper, where does he live now?
17 A. He's in the process of relocating to
18 [DELETED].
19 Q. Poor Mark. Where does he live now?
20 A. He's in temporary housing in [DELETED].
21 Just sold his house in [DELETED].
22 Q. Worse, temporary housing.
23 What was Mr. Harper's position? Was he
24 the vice-president of marketing?
25 A. Yes.
26 Q. And what position is he now taking in New
27 Jersey?
28 A. I believe his exact title is

1 vice-president, brand of retail, east.
2 Q. For Tosco?
3 A. Tosco Marketing.
4 Q. Does he have a position with Tosco?
5 A. I do not believe so, no.
6 Q. Who is your -- who is -- let me ask you
7 this. The other way. Is Mr. Harper, is this a
8 promotion from the VP of marketing for Circle K to VP of
9 brand of retail, east, for Tosco Marketing?
10 A. I don't believe it was positioned that
11 way. He has greater responsibility.
12 Q. Who is his immediate superior?
13 A. Bob Lavinia.
14 Q. Would you spell that?

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15 A. L-a-v-i-n-i-a.
16 Q. Okay. What's his title?
17 A. President of Tosco Marketing.
18 Q. Is Tosco Marketing's home office or the
19 place where the president resides in [DELETED] or in
20 Connecticut?
21 A. In [DELETED].
22 Q. In [DELETED].
23 A. Or [DELETED], excuse me.
24 Q. Does Mr. Lavinia reside in [DELETED]?
25 A. He resides in [DELETED]
26 Q. Who is Mr. Lavinia's immediate superior?
27 A. Jay Allen.
28 Q. A-l-l-e-n?

1 A. I believe so, yes.
2 Q. And where does he reside?
3 A. I believe in [DELETED].
4 Q. What's his position?
5 A. He's president of Tosco Corporation.
6 Q. Have you ever met him?
7 A. Yes, sir, once.
8 Q. Was he president when you met him?
9 A. Yes.
10 Q. Did you ever discuss with him your view of
11 what's involved in community relations and marketing as
12 those two areas juxtapose each other?
13 A. No.
14 Q. Do you know if Mr. Allen is the author of
15 the Community Relations -- Exhibit 4000 -- statement?
16 A. I do not know if he is the author or not.
17 Q. Do you know who is? Or who is responsible
18 for the information that is set forth on Tosco's web
19 page regarding the company?
20 MR. FOSTER: I'm going to object to that, the use
21 of the word "responsible." It has legal implications
22 and poses an ambiguity. I can't tell whether you're
23 asking who has authored it or whether you're asking
24 something else.
25 BY MR. McGUIRE:
26 Q. Well, let's start with authored.
27 A. The question is who authored this?
28 Q. Yes.

1 A. No, I do not know.
2 Q. Do you know who authored any of the
3 information that is on the web site?
4 A. No, I do not.
5 Q. Do you know how often the web site is
6 updated?
7 A. No, I do not.
8 Q. Do you know how many hits the web site has
9 received since the Master Settlement Agreement --
10 A. No, I do not.
11 Q. -- was signed?
12 Do you have any information at all as to
13 how many hits this web site receives on either a daily,
14 hourly, monthly, weekly, annual basis?
15 A. No, I do not.
16 Q. Have you ever looked into the web site as
17 a marketing tool?
18 A. This specifically, no.
19 Q. Who in the company is most likely to be

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20 responsible for the information? I know I'm going to
21 get an objection about responsibility, but who would you
22 ask about -- who would you go to to ask any questions
23 regarding who authored, who was the content --
24 responsible for the content or made up the content?
25 A. I would check with our Information
26 Technologies Department.
27 Q. Who is the head of that department?
28 A. Bill Nicholas.

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1 Q. N-i-c --
2 A. -- h-o-l-a-s, I believe.
3 Q. N-i-c-h-o-l-a-s?
4 A. I believe so, yes.
5 Q. Is the Information Technologies Department
6 a department of Tosco Marketing?
7 A. No.
8 Q. What company is that part of?
9 A. It's a division called Shared Services.
10 Q. And with whom are these services shared?
11 A. The -- the Circle K stores group and to
12 the extent they serve other groups within the company,
13 I'm not familiar with.
14 Q. What other groups are there within the
15 company?
16 A. Which company?
17 Q. Well, let's talk with -- about Circle K,
18 first of all.
19 A. There are no other divisions within
20 Circle K.
21 Q. Union 76, is that another division of
22 Tosco?
23 A. That's a part of the Tosco Marketing
24 company group.
25 Q. And Circle K's as well?
26 A. Yes.
27 Q. And other than Tosco Marketing, does Tosco
28 have any other divisions that you are aware of?

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1 A. Tosco Corporation?
2 Q. Yes.
3 A. Yes, they have a refining group.
4 Q. As long as you have been the
5 vice-president of marketing, have you been involved
6 in -- or has Circle K, Tosco Marketing, or Tosco been
7 involved in co-sponsoring events with tobacco companies?
8 A. Just to clarify. I'm not the
9 vice-president of marketing. I'm vice-president of
10 field and category marketing.
11 Q. I understand that. I just couldn't
12 remember the full title.
13 A. Okay.
14 Q. But thank you for correcting me.
15 A. Okay. Would you repeat your question?
16 I'm sorry.
17 Q. Yes. Has Tosco or any of its entities,
18 subentities, divisions, that you have personal knowledge
19 of, been involved in co-sponsoring events with the
20 tobacco industry?
21 A. No.
22 Q. Do you know if the tobacco industry
23 sponsors NASCAR races?
24 A. The tobacco industry? It does not.

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25 Q. It does not?
26 A. The tobacco industry does not, no.
27 Q. Does the tobacco industry have signage at
28 any NASCAR race?

1 A. The tobacco industry does not.
2 Q. Does the tobacco industry have any cars
3 that they enter that are painted with tobacco company
4 logos and colors?
5 A. Not that I am aware of, no.
6 Q. Is there a division or an arm of the
7 tobacco industry that sponsors the NASCAR events?
8 A. Not the tobacco industry, no.
9 Q. Is there any relationship at all with
10 NASCAR and the tobacco industry?
11 MR. FOSTER: I'm going to object at this point on
12 the basis that we're no longer talking about any of the
13 practices or conduct of Circle K, which is the real
14 subject of this deposition today. Instead, we're
15 talking about conduct of the tobacco companies, of
16 which, A, this -- which is not a subject of this
17 deposition and, B, is not within the expertise of this
18 deponent and likely not within his knowledge or
19 experience individually.
20 I will let him answer the question, but
21 I'm going to request that we move on to something that's
22 more germane to Circle K.
23 MR. McGUIRE: I believe this is germane to
24 Circle K. Let me lay a foundational question that makes
25 this clear.
26 Q. Circle K sponsors, say, NASCAR, doesn't
27 it?
28 A. Circle K is a convenient store for

1 NASCAR, yes.
2 Q. Your web site, Tosco web site, brags about
3 their involvement with the NASCAR program, doesn't it?
4 A. You're telling me that. I'm not aware of
5 that.
6 Q. You answered several of the questions I
7 asked you very specifically, not the tobacco industry.
8 A. That is correct.
9 Q. What I want to know is, are there any,
10 based on your knowledge, any agents of the tobacco
11 companies or any part of that industry involved in
12 NASCAR events?
13 A. Could you clarify what you mean by
14 "agencies"?
15 Q. Someone who is paid by the tobacco
16 industry directly or indirectly to promote their
17 products, their logos, their name recognition.
18 A. I'm having difficulty answering the
19 question when you use the word "industry."
20 Q. Okay. I meant it to be a broad term that
21 would include each of the individual companies and if
22 they, in order to -- whatever their reasons were,
23 appointed an advertising agency or a third agent that
24 didn't look, smell, or sound like a tobacco company,
25 but, in fact, that's what their goal and mission was, to
26 promote tobacco products.
27 A. Okay. Can you restate your question for
28 me again, please.

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Q. I would go back through all the things. Let me try and make it one that you can explain to me.

What do you know about the tobacco companies' involvement, directly or indirectly, with the NASCAR program?

MR. FOSTER: I'm going to lodge the same objection. It's not -- the behavior of the tobacco companies and their advertisement policies and promotion and campaigns are not the subject of this deposition, insofar as they don't intersect with Circle K. And he's not been designated as an expert or as a spokesperson of the company for these issues.

Also, despite your effort to lay a foundational connection, I frankly don't see it. So I will let him go a little bit, but then I'm going to ask that we move back to something that relates specifically to Circle K.

Go ahead and respond to the question.

THE WITNESS: To the best of my knowledge, R.J. Reynolds tobacco company is involved with NASCAR.

BY MR. McGUIRE:

Q. To the best of your knowledge, is that the only company that is part of the tobacco industry that's involved?

A. As far as cigarettes or all tobacco?

Q. Let's make it cigarettes.

A. As far as cigarettes go, that is the only one that I believe that is involved with the NASCAR

Winston Cup Series.

Q. Does Circle K sell biddies, b-i-d-d-i-e-s?

A. To the best of my knowledge, I do not believe we sell biddies.

Q. Have you been asked to market those?

A. No.

Q. If you were asked to market those, would you do so?

MR. FOSTER: Objection. That's a hypothetical, calls for speculation, is not, frankly, germane to any issue that's relevant in this lawsuit.

Would you allow me to pause for a second and ask my client what a bidi is?

MR. McGUIRE: Yes. It's an old lady that complains a lot.

MR. FOSTER: Okay. I will let you answer.

THE WITNESS: If the question was -- would you repeat it for me, please.

BY MR. McGUIRE:

Q. Yeah. As you sit here today, in your position -- I'm changing it just a little bit.

A. Okay.

Q. -- do you have any -- would the company have any objection to marketing that product?

A. I don't have a lot of information about biddies. So before we marketed them, I would have to get more information about them and then make a decision based on that information.

Q. Is that your usual practice?

A. As far as products go, before we put them in the store?

Q. Yes, sir.

A. Yes.

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6 Q. How about products that are already in the
7 store; do you do the same thing?
8 MR. FOSTER: Do you understand the question?
9 THE WITNESS: No, I'm not really clear on your
10 question. I'm sorry.
11 BY MR. McGUIRE:
12 Q. I'm asking you as -- with respect to
13 products that are already being marketed, do you request
14 information on them when a -- an issue presents itself
15 as to whether the product you are selling is safe?
16 A. I'm having difficulty with your question,
17 because it's pretty broad. Would you mind restating it
18 one more time, please. I'm sorry.
19 Q. You testified that as far as products go,
20 before you put them in the store, you do research on
21 them as to what's involved with them, correct? What the
22 product is all about?
23 A. Not necessarily what the product is all
24 about. Mostly on how the product is going to be
25 marketed, promoted, what the cost might be, what the
26 retail might be, whether we would put it in the store,
27 what type of consumers might buy the product. That
28 would be the type of research we would do.

1 Q. What about whether the product is a safe
2 product or not? Do you research that?
3 A. No.
4 Q. How many products -- Are you aware of any
5 products that you have taken off the shelf at any time
6 in the seven years you have been at Circle K because the
7 product was not safe?
8 A. There have been instances where products
9 have been recalled that they have been taken off the
10 shelves but then reintroduced. Other than that, I don't
11 specifically recall any item that we were told we had to
12 remove that was not safe.
13 Q. Let's assume that biddies puts out a
14 bubble gum flavored cigarillo. Would you market that at
15 Circle K?
16 A. I don't have enough information to answer
17 the question.
18 Q. Let's assume that the target market for
19 biddies are consumers between the ages of 15 and 25, and
20 let's also assume that biddies is a tobacco product.
21 Would Circle K market that product?
22 MR. FOSTER: Objection. That's an incomplete
23 hypothetical, calls for speculation. It's not
24 reasonably calculated to -- it's not relevant or
25 reasonably calculated to lead to admissible evidence.
26 BY MR. McGUIRE:
27 Q. You can answer.
28 A. I don't have enough information to answer

1 the question.
2 Q. What other information would you need to
3 know?
4 A. I would need to know the cost of the
5 product. I would need to know the proposed retail of
6 the product. I would need to know how the product was
7 going to be marketed and verify the assumption of the
8 target audience, and then view that against, you know,
9 our consumers.
10 Also, we need to know -- Because, again, I

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11 state that I'm not entirely familiar with this product.
12 So I would also need to know -- if you're saying assume
13 that it is a tobacco product, if it's a tobacco product,
14 I don't know how it's being marketed to anybody under
15 the age of 18 as a target audience, because that's
16 against the law.
17 So I don't know of -- I would have to
18 verify the specific target audience, as we have very
19 specific rules as far as the purchases of tobacco
20 products by people. Must be over the age of 18 and
21 provide identification for that.
22 Q. What do you -- when I say environmental
23 tobacco smoke, what does that mean to you?
24 MR. FOSTER: Can we pause for one second.
25 MR. McGUIRE: Sure.
26 (A recess was taken.)
27 BY MR. McGUIRE:
28 Q. I will reread you the question. When I

1 say environmental tobacco smoke, what does that mean to
2 you?
3 A. I mean as far as the company goes, I'm not
4 aware of any belief the company has. So I mean anything
5 that I say would be, you know, my belief of what
6 environmental tobacco smoke is, which is, I guess,
7 any -- What I believe environmental tobacco smoke to be
8 is the burning of a cigarette and the tobacco -- the
9 smoke that comes from that. And I would also include
10 cigars and pipes in that as well.
11 Q. For purposes of our discussion, I'm not
12 going to rely on a technical definition of environmental
13 tobacco smoke, but I want you to assume for purposes of
14 my questioning -- Well, let me just lay a little more
15 foundation.
16 What do you understand secondhand smoke
17 is? Same thing as environmental tobacco smoke?
18 A. Broadly, yes.
19 Q. And what about passive smoking?
20 A. Passive smoking or passive smoke?
21 Q. Passive smoke, we will call it.
22 A. I really don't have a belief or opinion on
23 what passive smoke would be.
24 Q. For purposes of my question, assume it's
25 the same as secondhand smoke or environmental tobacco
26 smoke. All right?
27 A. All right. So all three are exactly the
28 same.

1 Q. Yes, for purposes of this discussion.
2 A. Okay.
3 Q. You don't have any understanding that
4 they're any different, correct?
5 A. I'm not sure what passive smoke means.
6 So --
7 Q. Okay. Have you read any articles or do
8 you have any information regarding environmental tobacco
9 smoke?
10 A. Have I or has the company?
11 Q. Well, you are here as the person most
12 knowledgeable for the company. So I will ask you on
13 behalf of the company, does anyone in the company that
14 you are aware of have any knowledge at all about
15 environmental tobacco smoke?

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16 A. Yes.
17 Q. Who would have the most knowledge about
18 environmental tobacco smoke in the company? And I'm
19 going to use a broad definition of the company to
20 include not only Circle K, but Tosco and Union 76. And
21 all of Tosco's divisions.
22 MR. FOSTER: I object to that. Tosco and Union
23 76 are not parties to this lawsuit. The only party to
24 this lawsuit is Circle K. I'm going to instruct the
25 witness to limit his responses to Circle K.
26 BY MR. McGUIRE:
27 Q. Okay. I'm assuming you will follow your
28 attorney's advice or instruction?

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1 A. Yes, I will.
2 Q. So would you then answer my question as it
3 relates to Circle K?
4 A. I believe I would have seen the most
5 information on environmental tobacco smoke within the
6 company.
7 Q. Why do you think you would have the most
8 information?
9 A. I review documents from -- basically that
10 deal with any of the product categories we sell. I
11 frequently review information that is made available in
12 the public domain about the products we sell.
13 Q. Why do you do that?
14 A. It's part of my job responsibility to
15 understand how best to sell the products that we have in
16 our stores.
17 Q. And based on your review of the
18 information, have you come across any documents or
19 information that indicate that environmental tobacco
20 smoke causes cancer?
21 A. I'm not sure how to answer the question,
22 because I have a two-part answer.
23 Q. Well, you can give me both parts then.
24 MR. FOSTER: Either that or explain your
25 difficulty so we can get a better dialogue going.
26 THE WITNESS: Okay. My difficulty in answering
27 the question is that I heard of one piece of information
28 that said that environmental tobacco smoke caused

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1 cancer, which was the study I believe that was done by
2 the EPA, and then it was later found to be a faulty
3 study.
4 BY MR. McGUIRE:
5 Q. What year was that study done?
6 A. I do not recall.
7 Q. Was it done within the last two years?
8 A. I do not recall.
9 Q. Okay. Have you reviewed any articles that
10 indicate that environmental tobacco smoke does not cause
11 cancer?
12 A. Not to my recollection, no.
13 Q. Have you received any information from the
14 tobacco companies with whom you have a business
15 relationship regarding environmental tobacco smoke that
16 causes or forms the basis of your understanding of
17 environmental tobacco smoke and the risks associated
18 with it, if any?
19 A. Would you define "business relationship"
20 for me?

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21 Q. Yeah. Any of the people that we have
22 already talked about your meeting with them as a result
23 of you being a marketing person and them being a
24 marketing person, them wanting to sell you on the idea
25 of you promoting their products in your stores.
26 A. Restate the question, please.
27 Q. Have you received any information from the
28 tobacco companies with whom you have a business

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1 relationship regarding environmental tobacco smoke that
2 causes or forms the basis of your understanding of
3 environmental tobacco smoke and the risks associated
4 with it?
5 A. No.
6 Q. Have you received any information from
7 anyone that addresses environmental tobacco smoke and
8 the risks associated with it?
9 A. I'm having difficulty answering the
10 question because it's too broad. I have read articles
11 in the public domain about --
12 Q. Other than public domain. I'm sorry. I
13 didn't mean to interrupt you. Go ahead and finish.
14 A. As I was saying, just magazine articles,
15 which makes it difficult to answer the question, because
16 it's fairly broad.
17 Q. I will try to narrow it. Have you read
18 newspaper articles that indicate that environmental
19 tobacco smoke causes breast cancer?
20 A. I do not recall reading anything as
21 specific as that.
22 Q. 4001 for identification is a newspaper
23 article dated March 15, 2000, entitled Second Hand Smoke
24 Doubles Breast Cancer Risk Study.
25 (Plaintiffs' Exhibit No. 4001 was marked.)
26 BY MR. McGUIRE:
27 Q. Let me know when you have had a chance to
28 peruse that article or read it. And my question is

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1 going to be whether you have seen it before.
2 MR. FOSTER: Only read as much as you need to to
3 answer the question whether you have seen it.
4 THE WITNESS: I have not seen it.
5 BY MR. McGUIRE:
6 Q. Okay. When you learn information about
7 environmental tobacco smoke that you didn't know before,
8 who in the company do you advise of this new
9 information, if anybody?
10 A. I would typically share that information
11 with the group -- Mike Struble, the group category
12 manager, and his immediate supervisor, Glenn Fleetwood.
13 Q. What is Gordon Fleetwood?
14 A. Glenn Fleetwood.
15 Q. Sorry. What's his job title?
16 A. Senior manager of category development.
17 Q. I assume then you will share this article
18 with both of those gentlemen, correct?
19 A. No.
20 Q. Why not?
21 A. It doesn't relate to the area that we
22 market products in. This is a study that relates to
23 Canada, and I don't -- we don't have any Circle K stores
24 in Canada.
25 Q. Is it Circle K's position that an article

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26 involving one of its products that's authored in Canada
27 has no bearing on the same product in California?
28 A. That would be a correct assumption. The

1 products are not the same.
2 Q. What products are not the same?
3 A. Cigarettes made for export are not the
4 same as cigarettes made for sale in the United States.
5 Q. How do you know that?
6 A. I was told by R.J. Reynolds that their
7 products sold outside the United States are different
8 than the U.S.
9 Q. When they say "different," do they mean
10 better or different?
11 A. They didn't say. They're just different.
12 Q. More lethal or less lethal?
13 A. They didn't say.
14 Q. Does it make a difference whether it's
15 lethal, whether it's more or less?
16 MR. FOSTER: Objection. We're getting
17 argumentative. You don't need to respond to that.
18 BY MR. McGUIRE:
19 Q. Do you believe everything that R.J.
20 Reynolds tells us about their product?
21 A. That is their responsibility, yes.
22 Q. Have you ever heard that R.J. Reynolds has
23 misrepresented facts regarding its products in the past?
24 A. No, I have not.
25 Q. Have you ever seen The Insider?
26 A. I'm not familiar with The Insider.
27 Q. Do you know that nicotine is addictive?
28 A. I do not have specific knowledge that it's

1 addictive. I have heard that it is addictive.
2 Q. Have any of the tobacco companies
3 genetically engineered their product to increase the
4 amount of nicotine in their product?
5 MR. FOSTER: Objection. Irrelevant, not likely
6 to lead to the discovery of admissible evidence. I
7 instruct you not to answer.
8 BY MR. McGUIRE:
9 Q. Is it important for you to know that
10 you're selling a product to addicts who can't control
11 how they use the product, as a marketer?
12 A. My responsibility is to sell products that
13 are legal for sale to the groups that are identified
14 they can be legally sold to.
15 Q. Wouldn't you be doing a disservice to the
16 community if you didn't take steps to protect people who
17 were victimized by this addiction that you placed in the
18 hands of the addict?
19 MR. FOSTER: Objection. That's argumentative.
20 It's inadmissible. It's not likely to lead to the
21 discovery of admissible evidence. Don't answer the
22 question.
23 BY MR. McGUIRE:
24 Q. Same question, only I will frame it in
25 terms, wouldn't it be contrary to the representations
26 made by your parent corporation under -- in Exhibit 4000
27 to not take steps to protect people who are victimized
28 by the addiction that -- the addictive product that you

1 placed in the hands of the addict?

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2 MR. FOSTER: Objection. It's argumentative. It
3 is irrelevant. It's not likely to lead to the discovery
4 of admissible evidence, and I will instruct the witness
5 not to answer.
6 BY MR. McGUIRE:
7 Q. What did the tobacco -- R.J. Reynolds tell
8 you about the cigarettes they exported as being
9 different? How were they different?
10 MR. FOSTER: Same objection. Same instruction.
11 BY MR. McGUIRE:
12 Q. Has Circle K ever marketed Premier
13 cigarettes?
14 A. What do you mean by "Premier"?
15 Q. Do you know what Premier cigarettes are?
16 MR. FOSTER: He's referring to the brand.
17 THE WITNESS: Is that a brand?
18 BY MR. McGUIRE:
19 Q. Yes. The smokeless cigarettes.
20 A. I don't have enough information to answer
21 the question.
22 Q. Has Circle K been asked to market Eclipse
23 cigarettes, which are not smokeless but apparently
24 "safer" than regular cigarettes, especially to people
25 who are not consumers of the cigarettes, but victims, as
26 being located in the same area as the smoker?
27 A. Ask the question again, please.
28 Q. Have you ever marketed Eclipse -- oh,

1 excuse me.
2 Have you ever been asked to test market
3 Eclipse cigarettes?
4 A. I do not believe so, no.
5 Q. Do you know -- have you heard of Eclipse
6 cigarettes?
7 A. Yes.
8 Q. Do you know where they are being test
9 marketed?
10 A. Not specifically, no, I do not.
11 Q. What do you know about Eclipse cigarettes?
12 Well, first, what is your source of information about
13 Eclipse cigarettes?
14 A. To the best of my recollection, we were
15 provided information on the test of Eclipse cigarettes
16 from R.J. Reynolds.
17 Q. And what were you provided?
18 A. Without reviewing things specifically, I
19 could not tell you. Part of the reason we don't have a
20 lot of information is, the best I can recall, we were
21 outside -- we do not have stores where the test market
22 is, and that's why we didn't gather a lot of information
23 about the product.
24 Q. Do you know whether any representations
25 were made by R.J. Reynolds as to whether or not Eclipse
26 lowers the risk of disease as compared to R.J. Reynolds'
27 other cigarettes?
28 A. Not that I am aware of, no.

1 Q. Did the information that you were provided
2 indicate that the marketing pitch for Eclipse would be
3 that it's a safer product?
4 A. Not that I am aware of, no.
5 Q. Do you have stores in the Dallas-Fort
6 Worth area?

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7 A. No, we do not.
8 Q. Do you know who Andrew Shindler is?
9 A. Yes.
10 Q. Who is he?
11 A. He's the -- I'm not sure of his exact
12 title since the spin-off, but he is the, I believe,
13 chief executive officer of R.J. Reynolds tobacco
14 company.
15 Q. Has he ever made any representations in
16 your presence about the safety of Eclipse cigarettes?
17 A. No, he has not.
18 Q. Did Circle K stores ever have images of
19 Joe Camel in its stores?
20 A. I'm having difficulty with the question,
21 because it is possible that a cigarette company placed
22 at some point that material in our store without our
23 knowledge.
24 Q. So is your answer, "No, as far as I know"?
25 A. To the best of my recollection, no, we did
26 not put it up.
27 Q. Have you taken any steps -- or did you
28 take any steps in the past to communicate with your

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1 stores and request that if there were any images of Joe
2 Camel or advertisements associated with that image, that
3 they be removed from your stores?
4 A. I'm going to answer the question broadly.
5 We have asked our stores not to allow any tobacco
6 companies to put up point-of-sale materials, signs.
7 Q. If point-of-sale materials are put up,
8 they would be put up by the company? Is that right?
9 A. No. We have asked them to be put up by
10 the company, but they could be put up by the tobacco
11 companies. We have then instructed our folks to remove
12 them.
13 Q. When did you make that instruction? When
14 did that occur?
15 A. I do not recall the exact date, but it was
16 some time in either late -- mid to late 1998 or early
17 1999.
18 Q. Are you aware of any practice utilized by
19 the tobacco industry of adding ammonia to its tobacco in
20 order to alter the pH which would spike the delivery
21 system of nicotine to the consumer?
22 MR. FOSTER: Objection. That question is not
23 relevant to this lawsuit. It's not likely to lead to
24 the discovery of admissible evidence, and I instruct the
25 witness not to answer.
26 BY MR. McGUIRE:
27 Q. Are you aware of any efforts by R.J.
28 Reynolds tobacco company to discredit reports by

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1 independent research agencies regarding the risks of
2 tobacco and secondhand smoking?
3 A. Restate the question, please.
4 Q. I'm going to reread it.
5 A. Repeat it. Repeat is fine.
6 Q. Are you aware of any efforts by R.J.
7 Reynolds tobacco company to discredit reports by
8 independent research agencies regarding the risks of
9 tobacco and secondhand smoking?
10 A. Not specifically, no.
11 Q. What diseases are associated with

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12 environmental tobacco smoke based on epidemiological
13 studies?
14 A. I'm not specifically aware of the specific
15 diseases caused by ETS.
16 Q. Are you aware of the declarations that
17 were filed by the plaintiffs in this case?
18 A. Mm-hmm.
19 Q. -- in support --
20 A. Excuse me.
21 Q. -- of the preliminary injunction?
22 A. Would you repeat that last question?
23 Q. Yes. Are you aware of the declarations
24 that were filed in this case in support of the
25 preliminary injunction?
26 MR. FOSTER: There was a preliminary injunction
27 motion that occurred earlier in the case. Did you ever
28 see any documents relating to that?

1 THE WITNESS: Without reviewing the documents --
2 I have seen so many documents in this case. Without
3 seeing the specific document, I would have trouble
4 recalling exactly which documents I saw.
5 BY MR. McGUIRE:
6 Q. Well, did you see any documents having to
7 do with the preliminary injunction, or is that just kind
8 of, like, all muddied together with everything else you
9 may have seen? Let me --
10 A. You're asking me to specify a document by
11 a term which is not usually in my vocabulary. So I have
12 difficulty understanding exactly what document you're
13 talking about. If you could show me the document, I
14 would have an easier time identifying it.
15 Q. Okay. If I provide you with
16 epidemiological studies regarding the risks associated
17 with ETS, will you take them home and share them with
18 the rest of senior management at Circle K and Tosco?
19 MR. FOSTER: Well, objection. This witness is
20 here to testify about the state of this company's
21 knowledge.
22 MR. McGUIRE: Which we're trying to improve.
23 MR. FOSTER: That's fine, but he's not here to be
24 inquired about -- well, he's not here at this point to
25 undertake efforts on behalf of the plaintiffs. So the
26 question is not germane. It's argumentative, and I will
27 instruct the witness not to answer.
28 //

1 BY MR. McGUIRE:
2 Q. When you sell a pack of cigarettes to a
3 customer, what do you anticipate they are going to do
4 with those cigarettes?
5 A. I have no idea what they're going to do
6 with them.
7 Q. What do you anticipate they will do? You
8 may not know, but you certainly have an anticipation,
9 don't you?
10 A. They could be one of two things. They can
11 either consume the products or they could be buying it
12 for someone else. They could be buying it for their
13 spouse.
14 Q. Other than the EPA article that you talked
15 about earlier, are you aware of any other reports or
16 studies that link environmental tobacco smoke with any

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17 type of disease?
18 A. Aside from the exhibit you have given me
19 as well, the 4001?
20 Q. Yes, sir.
21 A. Not specific diseases, no.
22 Q. Do you know whether or not there's an
23 association between environmental tobacco smoke and
24 sudden infant death syndrome?
25 A. Not specifically, no.
26 Q. Have you ever looked to see if there is
27 such a link or that there are any reports supporting
28 such a link?

1 A. No, I have not.
2 Q. Do you know whether there has been any
3 reports that have associated ETS with asthma?
4 A. I have not specifically seen any.
5 Q. Coronary heart disease?
6 A. I have not specifically seen any.
7 Q. Increased incidents of respiratory
8 distress syndrome?
9 A. I haven't seen any specific studies to
10 that.
11 Q. Bronchitis?
12 A. I have not seen any specific studies to
13 that.
14 Q. Meningitis?
15 A. I have not seen any studies that relates
16 specifically to that.
17 Q. Intra-uterine growth retardation?
18 A. I have not seen any information that
19 relates specifically to that.
20 Q. There were filed in this case sworn
21 statements from toxicologists that link ETS with
22 intra-uterine growth retardation. Have you seen those
23 declarations?
24 A. No.
25 Q. These are written documents that say, "I
26 declare under penalty of perjury that the following is
27 true and correct." That's what a declaration is.
28 A. Okay. Again, without seeing the document,

1 I would have trouble identifying if I have seen it or
2 not.
3 Q. Have you seen any articles or are you
4 aware of any information about the association of ETS
5 with increased incidents of stroke?
6 A. Please repeat the question.
7 Q. Something happened here.
8 MR. FOSTER: I will repeat the question. Have
9 you seen any articles or are you aware of any
10 information about the association of ETS with increased
11 incidents of stroke?
12 THE WITNESS: Not specifically, no.
13 MR. McGUIRE: Time out here a second.
14 (A recess was taken.)
15 BY MR. McGUIRE:
16 Q. We have taken a brief recess. You have
17 had an opportunity to talk with your counsel. Do you
18 want to change any answers that you gave previously?
19 A. No.
20 Q. Same question. Are you aware of any
21 information regarding the association of ETS with -- and

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22 I'm going to have -- list a number of maladies or
23 diseases, and I will ask you to tell me whether you are
24 aware of any information regarding this association.
25 All right?
26 A. Yes.
27 Q. Any information regarding prenatal
28 cerebral palsy?

1 A. I'm not aware of any specific information.
2 Q. Pneumococcal infection?
3 A. I'm not even sure what that is.
4 Q. Okay. Asphyxic brain damage?
5 A. I'm not sure what that is.
6 Q. Hyperplasia of bronchial smooth muscles?
7 A. I'm not sure what that is.
8 Q. Increased incidents of atherosclerosis?
9 A. I'm not sure what that is.
10 Q. Middle ear infection in children?
11 A. I have not seen any specific information
12 relating to that.
13 Q. Do you have any children?
14 A. Yes, I do.
15 Q. Do you smoke?
16 A. No, I do not.
17 Q. Does your wife smoke?
18 A. My wife is not here.
19 Q. She's not at home?
20 A. Well, no, she's at home. No, she doesn't
21 smoke.
22 Q. Has anyone ever smoked around your
23 children?
24 MR. FOSTER: Objection. It's going too far.
25 BY MR. McGUIRE:
26 Q. Does the company -- does the company
27 believe that smoking should not take place around
28 children?

1 MR. FOSTER: Objection to the form of the
2 question. I would refer counsel back to the written
3 discovery responses that we provided on that issue. You
4 can wrestle with it. You have seen those responses and
5 verified those answers.
6 BY MR. McGUIRE:
7 Q. That's why he's here.
8 A. I mean, the company doesn't form beliefs.
9 So -- I mean, the company -- I mean it's a company. It
10 doesn't have beliefs on that. It doesn't form beliefs.
11 So if you want me to answer you, you would be asking my
12 personal opinion.
13 Q. Isn't that statement of community
14 relations a statement of beliefs that the company wants
15 the public to believe about it?
16 A. I'm not here to answer questions about
17 Tosco Corporation. I'm here to answer for Circle K,
18 Inc.
19 Q. Tosco talks and specifically mentions in
20 Exhibit 4000 Circle K. Do you see it in there?
21 A. Yes, I do.
22 Q. They speak on Circle K's behalf, right?
23 MR. FOSTER: Well, it's asking for a legal
24 conclusion, the document.
25 BY MR. McGUIRE:
26 Q. How did Tosco form the belief that it put

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27 forth in this Exhibit 4000? How is it possible since
28 the company doesn't form beliefs?

1 MR. FOSTER: Objection. Calls for speculation,
2 argumentative. You don't need to answer the question.
3 BY MR. McGUIRE:
4 Q. How does the company form beliefs that are
5 positive for the company's image?
6 A. I'm not aware of how that -- Tosco
7 Corporation does that.
8 Q. Who should I ask at Tosco?
9 MR. FOSTER: Objection. Tosco is not a party to
10 this proceeding. I'm going to instruct the witness not
11 to answer.
12 BY MR. McGUIRE:
13 Q. Does the company have any information
14 regarding environmental tobacco smoke in delayed or
15 impaired maturation in children?
16 A. Not that I am aware of.
17 Q. Delayed growth in bone ossification in
18 children?
19 A. Not that I am aware of.
20 Q. Delayed cellular development in the lung,
21 kidney, and liver in children?
22 A. Not that I am aware of.
23 Q. Bronchial constriction in children?
24 A. I'm not sure what that is.
25 Q. Decreased responsiveness of fibers and
26 lung tissue in children?
27 A. Not that I am aware of, no.
28 Q. Defects in cognitive development?

1 A. Not that I am aware of, no.
2 Q. Same question with respect to high
3 incidents of low birth weight?
4 A. Not that I am aware of, no.
5 Q. Same question regarding elevated blood
6 pressure?
7 A. Not that I am aware of, no.
8 Q. Same question regarding high incidents of
9 premature delivery?
10 A. Not that I am aware of, no.
11 Q. Aggravation of sinusitis in children?
12 A. I'm not sure what that is.
13 Q. Sinusitis?
14 A. I'm not sure what that is.
15 Q. Sinus infection?
16 A. Not that I am aware of, no.
17 Q. Aggravation of rhinitis in children?
18 A. I'm not sure --
19 Q. Runny nose.
20 A. Not that I am aware of, no.
21 Q. Aggravation of cystic fibrosis in
22 children?
23 A. Not that I am aware of, no.
24 Q. Does the company believe that parents and
25 third parties should avoid exposing children to tobacco
26 smoke?
27 MR. FOSTER: Same objection as before. I think
28 that question is vague and ambiguous in the broad sense,

1 nonsensical in the sense that it talks about a company's
2 belief. Again, I would refer back to the written

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3 discovery responses that we have provided on that
4 precise question.
5 BY MR. McGUIRE:
6 Q. Do you believe that parents and third
7 parties should avoid exposing their children to tobacco
8 smoke?
9 MR. FOSTER: Mr. Zikias personally?
10 MR. McGUIRE: Yes.
11 MR. FOSTER: Mr. Zikias' personal beliefs are not
12 an appropriate subject to this deposition. I instruct
13 him not to answer.
14 BY MR. McGUIRE:
15 Q. Does -- does the -- well, let me see. I
16 don't know if I got an instruction not to answer that
17 last one before that.
18 MR. FOSTER: About the company's beliefs, I
19 actually did not instruct him not to answer.
20 MR. McGUIRE: Okay.
21 MR. FOSTER: If you want him to thrash around
22 with that again.
23 MR. McGUIRE: I don't want him to thrash around.
24 I want him to answer.
25 Q. Does the company have a position with
26 respect to parents and other parties avoiding exposing
27 young children to tobacco smoke?
28 A. Not that I am aware of, no.

1 Q. Does the company take a position on
2 children and exposure to environmental tobacco smoke?
3 A. Not that I am aware of, no.
4 Q. Does the company take a position on
5 whether or not tobacco is addictive?
6 A. Not that I am aware of, no.
7 Q. Does the company take any -- or has the
8 company implemented any changes to deal with the
9 addictive nature of tobacco?
10 A. Please repeat the question.
11 Q. Has the company implemented any changes in
12 marketing of the product to deal with the addictive
13 nature of tobacco?
14 A. Not that I am aware of, no.
15 Q. Does the company have any expectations as
16 to what the consumer of tobacco products will -- whether
17 the consumer of tobacco products will be able to control
18 their use of the product?
19 A. Ask the question again.
20 Q. Does the company have any expectations as
21 to whether the consumer of tobacco products will be able
22 to control their use of the product?
23 A. Not that I am aware of, no.
24 Q. Has the company ever implemented any
25 marketing programs which were geared towards increasing
26 the amount of cigarettes that were sold by the company?
27 A. Yes.
28 Q. Is that marketing done inhouse, that

1 marketing program done inhouse or completed inhouse?
2 A. I don't understand the question, what you
3 mean inhouse.
4 Q. Do you use an advertising agency to assist
5 Circle K in its marketing of tobacco products?
6 A. Yes, we do.
7 Q. Who do you use?

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8 A. We use PS Studios.
9 Q. Where are they located?
10 A. I'm not sure.
11 Q. How long have you been using them?
12 A. I don't recall specifically, but greater
13 than two years. We also use Daley & Associates as our
14 ad agency of record, and I do not recall if they have
15 done any tobacco -- created for us or not.
16 Q. But you do know that PS Studios has
17 specifically been involved in the marketing of tobacco
18 products?
19 A. Narrowly define marketing. They create
20 art work for us.
21 Q. Could you describe for me the type of art
22 work they might typically create?
23 A. Window signs, art work for newspaper ads.
24 Q. You brought some documents with you today
25 that had newspaper ads contained in the package. Is
26 that typical of the type of work that PK Studios -- or
27 PS Studios would perform?
28 A. Yes, it is, but they did not do those that

1 I am aware of.
2 Q. Who is your contact at PS Studios?
3 A. I don't have a specific contact. I
4 contact them through our advertising group in marketing.
5 Q. How does -- how are you organized such
6 that there's an advertising group in marketing?
7 A. The advertising group would be responsible
8 for the direct relationship with the ad agencies, and
9 the relationship would be -- it's almost typical of an
10 advertising agency/client relationship. They're
11 almost -- they act as our ad agency. The advertising
12 group does.
13 Q. Has it always been the policy of -- has it
14 always been the position of the company that they don't
15 form beliefs?
16 A. I don't know how to answer that question.
17 You're saying one always. I'm not sure which company
18 you mean.
19 Q. Well, let's start with Circle K. As long
20 as you have been associated with them, seven years,
21 have -- were you told, when you first came on board,
22 seven years ago, that we don't form beliefs here?
23 MR. FOSTER: Objection. The question is
24 argumentative. I'm going to instruct him not to answer.
25 Let's move on.
26 MR. McGUIRE: Well, I don't know where your
27 argumentative objection comes from, but I'm not going to
28 argue with you. But I will try and rephrase this

1 question so it's not even close to argumentative.
2 Q. When did you first come to understand that
3 Circle K did not form beliefs as to the risks associated
4 with any of the products it sells?
5 MR. FOSTER: I think the question is equally
6 defective, your use of the word "beliefs." I haven't
7 objected to the use of the word "policies, position,"
8 Any other way of characterizing it. The company has
9 responded to discovery, indicating its discomfort with
10 the word "belief" and its view that the company
11 possesses, quote, unquote, "beliefs."
12 So there may be a way to go about this,

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13 but I don't think querying him about the company's view
14 that, as a collection of individuals, it doesn't form a
15 collective belief is the way to do it.
16 BY MR. McGUIRE:
17 Q. My question has to do with where was the
18 genesis of this position that we don't form beliefs.
19 Okay? So that's what I want to know. Where did that
20 come from? Did someone tell you that?
21 A. No.
22 Q. Did it pop up in 1998 after this lawsuit
23 was filed? Those kind of questions.
24 MR. FOSTER: I want you, for purposes of
25 answering this question, to be aware of the
26 attorney-client privilege and not disclose any
27 communications that you have had with any counsel.
28 THE WITNESS: Okay.

1 BY MR. McGUIRE:
2 Q. I agree. That you should eliminate that
3 area.
4 A. Okay. Would you ask the question again?
5 Q. You have testified, I believe, that the
6 company doesn't form beliefs. Correct?
7 A. I'm not aware that the company has formed
8 any beliefs, no.
9 Q. You have also signed written discovery
10 under penalty of perjury where that statement has been
11 alluded to. Correct?
12 A. I believe so, yes.
13 Q. My question has to do with how did that
14 develop? How did that position about not forming
15 beliefs generate? Where did it come from? Did someone
16 tell you that when you first came onboard, or did it
17 develop out of some other series of events?
18 A. I have formed that opinion based on not
19 being informed of any beliefs on those subjects relating
20 to environmental tobacco smoke.
21 Q. Well, does the company have beliefs on
22 other issues?
23 A. Not that I have been made aware of.
24 Q. If I take the word "belief" and put it
25 away, does the company have a position on environmental
26 tobacco smoke and its associated risks?
27 A. Not that I am aware of, no.
28 Q. Does the company have a position on

1 alcohol and the risks associated with it?
2 A. Beyond the extent of selling the product
3 only to consumers of legal age for their product, no.
4 Q. Are there any warnings associated with the
5 sale of alcohol?
6 A. Yes, there are.
7 Q. Are these warnings posted at Circle K
8 retail outlets?
9 A. Yes, they are.
10 Q. Are they required by law?
11 A. To the best of my knowledge, yes, they
12 are.
13 Q. Are any warnings that are not required by
14 law posted at any of your retail outlets having to do
15 with alcohol?
16 A. Not that I am aware of, no.
17 Q. Do you provide warnings at --

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18 A. May I clarify that last answer?
19 Q. Yes.
20 A. I don't know if it relates, but since the
21 FDA, since the Supreme Court overturned the ruling that
22 the FDA could enforce the signage requirements of the
23 posting "We ID," we still have those posted. I don't
24 know if that relates to alcohol as well. So -- I'm not
25 specifically aware of the law in California. I'm only
26 aware of that portion of the Supreme Court ruling that
27 says we don't have to post the required FDA materials on
28 "We ID." So in that case, that law has changed

1 recently. We still post, "We card. We ID" information.
2 Q. Are you required to post a warning that
3 says -- by law, that says, "Do not smoke cigarettes next
4 to this gasoline pump"?
5 A. No.
6 Q. Do you have warnings such as that on
7 gasoline pumps at 76 stations and at Circle K stations
8 that sell gasoline?
9 A. Specific to cigarettes, no.
10 Q. Not cigarettes. This is specific to using
11 gasoline with a lighted cigarette.
12 A. State the question again, please.
13 Q. Yeah. Do you have signs that in substance
14 say, "Do not pump gas with a lighted cigarette" or
15 "Caution. Refrain from smoking in the vicinity of the
16 gas pump"?
17 A. I'm not sure of the specific wording on
18 the gasoline pump. I know there is a warning about no
19 open flames.
20 Q. Is there any law that you are aware of in
21 California that requires that warning?
22 A. I'm not aware -- I'm not responsible for
23 marketing gasoline; so I'm not aware of the specific
24 laws in California as far as posting on gasoline
25 dispensers.
26 Q. Would you agree that it's pretty obvious
27 that you shouldn't smoke cigarettes around gasoline?
28 A. Yes. Are you asking for my opinion or the

1 company's opinion?
2 Q. Either one. Let's start with yours first.
3 MR. FOSTER: Objection. He's not here to give
4 his opinions.
5 MR. McGUIRE: All right. We took care of that.
6 MR. FOSTER: In terms of the company, it's not a
7 proper subject for this deposition.
8 BY MR. McGUIRE:
9 Q. Now we can get the company's position.
10 Are you instructing him not to answer?
11 MR. FOSTER: Yes.
12 MR. McGUIRE: I don't know what -- are you
13 objecting to something?
14 MR. FOSTER: Well, answer the question, and then
15 we will go on.
16 BY MR. McGUIRE:
17 Q. Okay.
18 A. Ask the question again, please.
19 MR. McGUIRE: Could you find it? It's off my
20 screen.
21 MR. FOSTER: The question is: "Would you agree
22 that it's pretty obvious that you shouldn't smoke

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23 cigarettes around gasoline?"
24 THE WITNESS: Yes.
25 BY MR. McGUIRE:
26 Q. And the company still warns people of that
27 obvious risk. Isn't that true?
28 A. If we were required by law to do so, yes.

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1 Q. Do you know whether you are required by
2 law to post the warnings that are posted around the 76
3 gas station I went to this morning and the Circle K I
4 went to yesterday?
5 A. I'm not familiar with the specifics on
6 gasoline marketing, warnings that need to be posted.
7 Q. Does the company get any kickback from the
8 Marlboro man for the merchandise that is ordered from
9 customers of Circle K?
10 A. I'm having difficulty answering the
11 question when you say the Marlboro man. Who is the
12 Marlboro man, please.
13 Q. There is, at the Circle K that I visited
14 yesterday, a sign right in the front, at eye level,
15 which has a little coupon that you can tear off to order
16 Marlboro gear, is what it's called; and it is Marlboro
17 logo T-shirts, hats, boots, jackets, things like that.
18 A. Mm-hmm.
19 Q. So the question I have is, is there some
20 economic incentive to Circle K if those orders come from
21 a Circle K store?
22 MR. FOSTER: I'm going to object that this is
23 irrelevant and not calculated to lead to the discovery
24 of admissible evidence. If you want to -- I would ask
25 for some kind of a showing from you, Counsel, that
26 somehow that is germane to the lawsuit that is presented
27 indicated on the failure to disclose the risks of
28 secondhand smoke.

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1 MR. McGUIRE: We think it's only fair that if
2 you're going to advertise one side, that you should
3 advertise the other.
4 MR. FOSTER: Okay. I'm not persuaded. I
5 instruct him not to answer.
6 MR. McGUIRE: Thank you, Your Honor.
7 Q. Has Circle K taken any steps to advise its
8 retail owners and operators as to what they can do to
9 avoid contributing to the delinquency of a minor in the
10 State of California?
11 MR. FOSTER: Objection. To whom are you
12 referring when you use the phrase "retail owners and
13 operators"?
14 MR. McGUIRE: The point-of-sale person that's in
15 charge of your outlets.
16 MR. FOSTER: Does it make any sense to you?
17 THE WITNESS: No, the question doesn't make sense
18 to me. Could you re-ask it?
19 MR. FOSTER: Actually, I'm going to object to the
20 question anyway on the basis it's not relevant and not
21 calculated to the lead to the discovery of admissible
22 evidence. So I would instruct him not to answer
23 anything on that subject.
24 BY MR. McGUIRE:
25 Q. Well, do you know, sir, that it's a
26 violation of the Penal Code to contribute to the
27 delinquency of a minor in the State of California?

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28 MR. FOSTER: Same objection. Same instruction.

1 BY MR. McGUIRE:
2 Q. Do you know that one of the prongs of a
3 17200 violation is an illegal act or violation of any
4 Penal Code section or statute in the State of
5 California?
6 MR. FOSTER: I believe that calls for a legal
7 conclusion. You are probably asking this witness for
8 something that he's not qualified to speak to.
9 But you can say whether you know or not.
10 THE WITNESS: I do not know. I'm not qualified
11 to answer the question.
12 BY MR. McGUIRE:
13 Q. What steps, if any, has Circle K taken to
14 ensure that there is not a violation of the Penal Code
15 in the State of California regarding the sale of tobacco
16 products, if any?
17 MR. FOSTER: You mean the prohibition on the sale
18 to minors.
19 MR. McGUIRE: Or contributing to the delinquency
20 of a minor.
21 MR. FOSTER: Well, I'm going to instruct the
22 witness not to answer on the basis it's not relevant or
23 calculated to lead to the discovery of admissible
24 evidence. This case is not about the sale to minors or
25 about any alleged unfair practice beyond the failure to
26 disclose the alleged health hazards of ETS.
27 BY MR. McGUIRE:
28 Q. What does the public know about the risks

1 associated with environmental tobacco smoke?
2 A. I have trouble answering the question. I
3 can't speak for what the public knows. I'm not a
4 spokesperson for the public at large.
5 Q. Well, do you know whether or not they're
6 aware of any of the risks that I went through with you
7 of the different diseases that are caused by
8 environmental tobacco smoke, one way or the other?
9 MR. FOSTER: I object. It calls for speculation.
10 You can answer.
11 THE WITNESS: You're asking me to, you know -- I
12 don't know what other people know.
13 BY MR. McGUIRE:
14 Q. Has the company ever discussed whether or
15 not they should authorize a survey of the general
16 population in California to determine what the state of
17 knowledge is regarding ETS and associated risks of
18 disease?
19 A. Not that I am aware of. No. It's outside
20 the scope of what we would do.
21 Q. Have any of the tobacco companies told you
22 that as far as they know, or have represented to you,
23 that the risks associated with ETS are known and well
24 understood by the general public?
25 A. The tobacco companies haven't made any
26 representations to me about environmental tobacco smoke.
27 Q. Have the companies paid Circle K any
28 monetary incentives related to the placement of their

1 product in your stores?
2 A. Yes, they have.
3 Q. How does that work?

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4 A. I'm going to need to ask the lawyer from
5 Liggett to not be present, because there's some
6 confidential information in those agreements that I'm
7 not comfortable sharing broadly.
8 Q. That's going to create a problem. So
9 let's see. It's 10 to 12:00. This would be something
10 that you guys can talk over lunch.
11 MR. FOSTER: I guess my view of the world is that
12 there's some generalities that probably apply to all
13 companies, and I'm perfectly happy -- assuming John is
14 willing -- to go into those, and there are specifics
15 which, candidly, are not germane, that are trade secret
16 and other confidential-protected information that could
17 not be shared with other retailers or with the
18 manufacturers themselves or other manufacturers. So
19 when -- we can start out with the generalities and then
20 see where we go.
21 MR. McGUIRE: Okay.
22 THE WITNESS: The --
23 MR. FOSTER: Wait. Let me make sure you
24 understand to stop when you don't feel comfortable with
25 this particular question.
26 THE WITNESS: Okay. Ask the question again,
27 please.
28 //

1 BY MR. McGUIRE:
2 Q. How does that work?
3 A. The programs vary specifically from
4 manufacturer to manufacturer, but there would be a fee
5 paid based on volume and percent of facings of product
6 within a display. In the past, it might have been the
7 position of the display.
8 Q. What's considered -- when did the position
9 of the display not become something that could be
10 marketed?
11 A. Specifically to us, when we changed our
12 fixture from -- when we moved, what we call, the back
13 bar fixture, the program that we began rolling out in
14 January of 2000.
15 Q. So before January of 2000, a cigarette
16 manufacturer could, in exchange for some monetary
17 incentives to the company, place its product pretty much
18 anywhere it wanted in the store, correct?
19 A. No, that is not correct.
20 Q. Where am I wrong?
21 A. They couldn't place it anywhere in the
22 store. There would be specific areas where we would say
23 that they could place it, and then it would be
24 negotiated from there.
25 Q. What specific areas could they put them in
26 before January of 2000 that they can't put them in after
27 January of 2000?
28 A. As I testified before, right around the

1 front register. We have two registers, that there would
2 be fixtures right in front of those, that would more or
3 less form an L to the outside of those. And then also
4 we had some bins in front of the -- right in front of
5 the cash register that had product in them as well.
6 Q. What products competed for that position
7 before 2000, if any?
8 A. It would have been products from Philip

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9 Morris, R.J. Reynolds, Brown & Williamson, Lorillard,
10 Liggett & Myers.
11 Q. After 2000, what products were placed in
12 the same locations?
13 A. Where the cigarettes were before?
14 Q. Yes.
15 A. Today, there is phone cards, gasoline
16 credit card applications, cell phones, and I believe
17 beef jerky.
18 Q. Anything else? Gum, candy?
19 A. There -- there's some gum and candy
20 underneath. I'm not specifically sure if we have got
21 gum up on top of the counter now.
22 Q. Who is it that you are trying to reach
23 with the position that's in front of the cash registers
24 that you just described? What market? What audience?
25 A. Basically, just to the store.
26 Q. Not age specific, not more leaning towards
27 minors?
28 A. No. There's cell phones there. There's

1 phone cards there. Credit card applications. Those are
2 products primarily geared towards adults.
3 Q. There's also candy and gum, correct?
4 A. Below the register, yes.
5 Q. And they're geared towards minors, aren't
6 they?
7 A. No. They're geared towards consumers.
8 Q. In general?
9 A. Yeah. The candy we have on the cash
10 register is -- below the cash register is mostly our
11 larger bars of candy, the king size bars.
12 Q. Maybe the word hasn't gotten to San Diego.
13 What you just described isn't what I saw. I saw small
14 packs of gum, small candy; high, high, sugar content
15 candy, not something that an adult would normally imbibe
16 in. Is the word out to all of your stores as to what
17 type of products you want in front of the counters as
18 opposed to behind the counter?
19 A. Yes. As I mentioned to you before, we
20 began rolling out the program in January of 2000. It
21 isn't around everywhere yet.
22 Q. Is it supposed to be out in San Diego
23 County?
24 A. Not yet. California is started in April,
25 this month.
26 Q. Have you sent literature out to your
27 point-of-sale owners or representatives as to what
28 they're to do and how to do it?

1 A. Yes.
2 Q. Do you have custody of that information?
3 A. I have the information back in my office,
4 yes.
5 Q. How big a document are we talking about?
6 A. It's a book. 700 pages.
7 Q. What's it entitled?
8 A. I believe Cigarette Back Bar Program.
9 Q. Is this a document that was generated
10 totally by Circle K without any input from any other
11 sources, any other manufacturers?
12 MR. FOSTER: Tobacco manufacturers?
13 BY MR. McGUIRE:

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14 Q. That's specifically what I am interested
15 in. Is there any input from the tobacco companies -- or
16 was there any input, whether it was accepted or not,
17 that led to the final document?
18 A. Yes.
19 Q. Who specifically are you aware of that had
20 input into this document?
21 A. Some of the individuals that I mentioned
22 from the Philip Morris previously are Rodger Rolland and
23 Ross Webster, and they had input on a very small portion
24 of that, and the portion that they had input on is
25 maybe -- I don't want to speculate on a percentage of
26 the book, but it was a very, very insignificant amount
27 that related to the diagram of how cigarettes -- the
28 brands of cigarettes and how they would be placed on a

1 fixture. There is a diagram in there that details that
2 to the stores. And that -- although produced inhouse,
3 the tobacco companies, both Philip Morris, RJ Reynolds,
4 Brown & Williamson, and I believe Lorillard, had input
5 on that document.
6 Q. Before we break for lunch, what I would
7 like you to do is -- there are a package of documents
8 that your counsel handed to me this morning, and they
9 consist of a number of pages that are clipped together.
10 Are these documents generically all the same such that
11 it would be appropriate for me to mark the whole package
12 as an exhibit when we talk about it or -- counsel is
13 nodding yes. I assume we will take his advice, and we
14 will mark that package of documents as 4002 for
15 identification.
16 (Plaintiffs' Exhibit No. 4002 was marked.)
17 MR. FOSTER: Generally speaking, it's a
18 collection of ads that advertise the pricing
19 availability of tobacco or of cigarettes. There may be
20 a memo in there that's a cover to some collection of
21 ads, but I think it's appropriate to mark it as a group
22 exhibit.
23 THE WITNESS: Yes.
24 BY MR. McGUIRE:
25 Q. You can keep it in front of you. It will
26 be Exhibit 4002. Not that I do not wholeheartedly
27 accept your counsel's explanation, but for the record,
28 would you tell me what these documents are, what they

1 are supposed to be or a representative of?
2 A. These are copies of advertisements that,
3 to the best of my knowledge, were run in some California
4 newspapers, speaking of advertising, the newspaper, some
5 beverages, gasoline, and cigarettes.
6 Q. Let's go to the first page. Who prepared
7 this page?
8 A. Who prepared this first page?
9 Q. Yes.
10 A. To be honest with you, I do not know.
11 Q. What does the -- The first two pages have
12 to do with advertising that Circle K was going to do in
13 the Inland Valley Daily Bulletin in San Bernardino. Is
14 that correct?
15 A. That is correct.
16 Q. And how do I read this? Are there
17 seven -- 14 different ads that are going to be placed in
18 this publication?

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19 A. To the best of my knowledge, yes.
20 Q. And is the -- under Date, is that the date
21 that a specific ad, No. 1, was going to be run?
22 A. Yes.
23 Q. When it says Section 1 and Section 2, does
24 that refer to sections of the newspaper?
25 A. Yes.
26 Q. So as I read this, on the 12th of
27 December, if you're going to run Cigarette Ad No. 1 and
28 Soda Ad No. 2, the cigarette ad will appear in Section 1

1 and the soda ad will appear in Section 2, correct?
2 A. I'm not entirely sure.
3 Q. And I asked you whether there were 14
4 different ads. Of the 14 different ads, does the ad in
5 all cases contain a cigarette portion of it -- or a
6 cigarette portion?
7 A. No, they do not.
8 Q. In the first two pages of Exhibit 4002,
9 there are 14 different ads described. Each one of them
10 has a cigarette ad in either Section 1 or Section 2.
11 Isn't that correct?
12 A. You are correct. I made a mistake. I'm
13 looking at the documents. I was looking at the wrong
14 ad.
15 MR. FOSTER: I will just have a running
16 objection. As a general proposition, the document
17 speaks for itself. So, for instance, Ad No. 7, there's
18 no cigarette content.
19 BY MR. McGUIRE:
20 Q. Counsel is correct. Ad No. 7 on the 28th
21 of December, you're advertising cell phones and soda,
22 but no cigarettes, but that's the only ad of the 14 that
23 doesn't have a cigarette component, correct? I'm just
24 looking at the first two pages, sir. Maybe I'm taking
25 you the wrong way.
26 MR. FOSTER: Actually, I think the inquiry so far
27 lacks foundation, that he really understands what this
28 is or how to read it.

1 MR. McGUIRE: Okay.
2 MR. FOSTER: But, you know --
3 MR. McGUIRE: I thought I did ask him what it
4 was, and --
5 Q. Do you know how to read this out here?
6 A. The -- the specification of Section 1 and
7 Section 2, I'm not entirely clear on what that means.
8 It could be a placement on a position on the
9 advertisement itself, or it could be a placement in the
10 newspaper. So without talking to the person who
11 generated this, that could be Section 1 of the
12 newspaper, or it could be Section 1 in the coupon.
13 Q. And when it says Cigarette Ad 1 or
14 Cigarette Ad 2, does that mean to you and me in the
15 document, which I have here speaking to me, that there's
16 two different kinds of ads for cigarettes --
17 A. That --
18 Q. -- 1 and 2?
19 MR. FOSTER: I'm going to just caution the
20 witness. Don't speculate. I mean, he can read the
21 document as well as you can read the document. If you
22 have some insight to offer or know what it means or how
23 it operates, go ahead and testify.

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24 THE WITNESS: I'm not specifically sure of what
25 Ad 1 or Ad 2 would mean without having created the
26 document.
27 BY MR. McGUIRE:
28 Q. Who did you get this information from?

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1 A. I had help securing some of the
2 information, but I'm not exactly sure of the source.
3 Q. It says on the top it's from Tosco
4 Marketing Company, and it has a telephone number?
5 A. Mm-hmm.
6 Q. So does that help you identify where it
7 came from or could that be you at Tosco Marketing?
8 A. No. That's an Ontario number. That -- I
9 do not know the fax number. The prefix number would be
10 for our office in Corona, California, but I would
11 speculate if it did come from there without verifying my
12 phone records as to that number.
13 Q. Who probably prepared this -- these first
14 two pages?
15 A. You're asking me to speculate.
16 Q. No. If you have to speculate, if you
17 would say "I'd be totally guessing," you would have to
18 tell me that. But I preface that with a probable, which
19 means more likely than not. If you can't tell us that,
20 then you would be speculating, and you just tell me, and
21 we will have to find that out from someone else.
22 A. It probably came from the merchandising
23 department in our Corona office.
24 Q. Have you seen documents like this in the
25 past?
26 A. Not specific to the cover page, no.
27 Q. Do you know why this particular document
28 or set of documents were put together? In other words,

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1 was there a request made or something, and this is what
2 came back?
3 A. To the best of my knowledge, yes.
4 Q. What was the request?
5 A. That we were -- as we were investigating
6 for this, we were looking for any advertisements that
7 might have been run in the State of California regarding
8 tobacco products.
9 Q. Okay. So is what we have as Exhibit 4002
10 a compilation of any advertisements that may have been
11 run in the State of California advertising tobacco
12 products that were funded by Circle K advertising
13 dollars during a specific time period?
14 MR. FOSTER: I'm going to speak to the issue, and
15 then I will let Mr. Zikias testify. The agreement
16 Mr. Brookey and I reached narrowly in the scope of the
17 request was that we would produce all exemplars of
18 tobacco advertisements that contained some content other
19 than merely pricing and availability information. So in
20 other words, if there was a tobacco advertisement out
21 there that simply said Marlboro and 2.69 a pack, you
22 don't have that. But if it has some content other than
23 that, this is it.
24 MR. McGUIRE: Thank you.
25 Q. Do you adopt that that's what Exhibit 4002
26 is, having heard that from Mr. Foster?
27 A. Yes.
28 Q. Okay. And we have more of the same,

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working our way through Page 8, and then starting at Page 10 are some content ads. Do you know whether -- how these advertisements correlate to the descriptions on the first nine pages of this exhibit?

A. No, I do not.

Q. So we couldn't pick out what Cigarette Ad No. 1 is from this compilation. Is that correct?

A. That's correct. I could not.

Q. We could probably deduce it, but you would be speculating, correct?

A. I would be speculating, yes.

Q. I see that you -- at the bottom of the first ad on Page 10 that you had misspelled cool. Doesn't that say, "Marlboro, Camel, and Winston Kool"?

A. Yes. That's spelled correctly.

Q. I understand. I just wanted to get a pre-lunch rise from your counsel. Okay. We're -- it's after twelve o'clock. I'm not short enough to say -- invite you to stay over the lunch hour to finish early. Maybe over the lunch hour, I will be able to narrow things down so that you get out of here earlier. How much would you like to take for lunch?

MR. FOSTER: You know, I'm not sure what's up around here, Mickey. Is there a place to get a quick sandwich or something?

MR. McGUIRE: Let's go off the record, with your permission. Thank you.

(A lunch recess was taken.)

San Diego, CA Tuesday, April 25, 2000, 1:15 p.m.

EXAMINATION

BY MR. McGUIRE:

Q. Sir, I want to invite your attention to Page 13 of Exhibit 4002. Do you have that?

A. Yes, I believe I do, yes. It's a fax page, 13.

Q. Yes, it is.

A. Okay.

Q. Who is Chris Wilson?

A. Chris Wilson is an employee of Circle K Stores, Inc.

Q. What's her position or job title?

A. His position is -- at the time -- he was just promoted this week. At the time, he was the region category manager for the western region.

Q. And what is he now?

A. He's a division manager.

Q. What division?

A. I'm not exactly sure. It's in Southern California. One of our stores' division. They have division of --

Q. Does he have any present responsibility regarding the marketing or sale of cigarette products?

A. No.

Q. Who is Laura M. Foley-Colvin, F-o-l-e-y hyphen C-o-l-v-i-n?

A. Based on the document, it appears she's a promotions coordinator. I don't personally know her.

Q. From the title of promotions coordinator, what can you deduce as to whether or not she's an

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5 employee of Circle K?
6 A. Oh, she's not an employee of Circle K.
7 Q. Can you tell me who she's an employee of?
8 A. I'm not sure, but by reading this, I'm
9 assuming the Daily Bulletin.
10 Q. We ran out of numbered pages
11 unfortunately. There is a memorandum dated March 9,
12 2000, and it's from Kathleen Grodsky, G-r-o-d-s-k-y.
13 Who is she?
14 A. Kathleen Grodsky is a senior advertising
15 specialist in Circle K's advertising group.
16 Q. Is she responsible in any particular way
17 for cigarette advertising?
18 A. She -- as I testified earlier, we use an
19 inhouse advertising group to have the agencies produce
20 materials for the marketing and category development
21 group. That would be Kathleen's responsibility.
22 Q. Is she located here in San Diego?
23 A. No. She's located in Tempe, Arizona,
24 office.
25 Q. This memo says that "These are standard
26 print ad 'templates' developed corporately." I take it,
27 that means that the design of the ads is inhouse with
28 this advertising group?

1 A. That is correct.
2 Q. And this memo goes to Susan Baier,
3 B-a-i-e-r, Nancy Cotton, Greg Dean, and Mike Struble.
4 What are their positions with the company?
5 A. Susan Baier is a category manager for
6 electronic services and gasoline.
7 Nancy -- the -- some of the -- and her job
8 in gasoline is very narrowly defined. It's primarily
9 working on credit card marketing for the 76 proprietary
10 credit card. Nancy Cotton is a category manager who
11 works on some of our electronic service programs, such
12 as cell phones, ATMs, pay phones, and phone cards.
13 Greg Dean -- I am told last week -- was a
14 group category manager responsible for beverages. He's
15 now our region merchandise manager in our southern
16 region.
17 And Mike Struble is the -- as I testified
18 earlier -- is the group category manager for tobacco.
19 Q. You told me this morning Glenn Fleetwood.
20 What's his position currently?
21 A. He's -- Glenn is senior manager of
22 category development.
23 Q. And he would be between you and Mike
24 Struble in the chain of command?
25 A. That is correct.
26 Q. Shirley -- Mathistad, M-a-t-h-i-s-t-a-d,
27 what's her position?
28 A. Shirley, she at the time worked for Greg

1 Dean. She was the category manager for fountain and
2 frozen beverages.
3 Q. Do you routinely get copies of ads,
4 memorandum, such as we have just been discussing? Do
5 you get these every week or every month?
6 A. Not -- not frequently. It would be
7 dependent on when we would do any advertising.
8 Q. Are there any instructions given that you
9 are to see any ads that are not template ads developed

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10 corporately before they're placed?
11 A. Yes.
12 Q. Do you have any recollection of there
13 being any template ad involving tobacco products that
14 you refused permission to place?
15 A. Of a template ad --
16 Q. Yes.
17 A. -- is the question?
18 No, I do not.
19 Q. How about if I make it broader, to an ad?
20 A. Regarding tobacco products?
21 Q. Yes.
22 A. Not that I recall, no.
23 Q. This compilation of documents is limited
24 in time to, looks like, January or December. And
25 January, I assume, of, yeah, 2000 and maybe some into
26 February. Is this group of documents representative of
27 all of the advertising that you did of this particular
28 kind, newspaper kind, involving tobacco products since

1 you have been with the company?
2 A. It's a sample representation, yes.
3 Q. Is it a reasonably cross-section
4 representation?
5 A. Yes, but there is some things that we
6 have -- we had done since I have been with the company
7 that are not contained in here.
8 Q. Would you give me an example of what those
9 would be?
10 A. Outdoor advertising, billboards.
11 Q. Anything else?
12 A. To the best of my recollection, that's
13 all.
14 Q. Do you do radio, TV advertising?
15 A. We do -- yes, we do.
16 Q. When you say, "we," you mean Circle K?
17 A. Circle K Stores, Inc. does, yes.
18 Q. And do they -- are they product specific,
19 those advertisements?
20 A. They are product specific, yes, they are.
21 Q. And I take it, no tobacco companies have
22 been involved in any of the television or radio ads for
23 the last five years?
24 A. No, they have not.
25 Q. Are you aware of any law that prevents
26 their being involved in such advertising?
27 A. The only law I'm aware of is based on the
28 Master Settlement Agreement. I don't know if that's

1 really a law.
2 Q. Before the Master Settlement Agreement
3 became the order of the court, did you co-op with any
4 tobacco manufacturers on the cost of placing billboard
5 advertisements?
6 A. Over what period of time?
7 Q. Anytime before December 8, 1998.
8 A. From what starting point?
9 Q. When you came to the company.
10 A. Not that I am aware of.
11 Q. Okay. Are you aware of such
12 advertisements before you came to the company?
13 MR. FOSTER: That's too remote in time. I'm
14 going to instruct the witness not to answer. That's not

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15 a proper subject of the lawsuit.
16 BY MR. McGUIRE:
17 Q. Do you advertise in any other format that
18 is product specific, and in particular, tobacco products
19 specific?
20 A. Repeat the question. I'm not clear what
21 you are asking.
22 Q. I'm trying to get a handle on the
23 different vehicles that you used to advertise tobacco
24 products in conjunction with Circle K.
25 A. Okay.
26 Q. You have shown me Exhibit 4000, which is a
27 collection of what you have described as typical
28 newspaper ads that we have used, and I assume these are

1 typical since December of 1998, or are they typical
2 going all the way back to seven years ago when you
3 joined the company?
4 A. They are typical of December 1998 forward.
5 Q. Okay. And is there any specific
6 difference that you recollect there being before
7 December 8th, 1998?
8 A. Your frame of time is too broad for my
9 recollection as far as advertising back seven years.
10 Q. Okay. You can't remember any particular
11 methodology, wording, design that hit the stop as of
12 December 1998, just wouldn't be appropriate or
13 permissible under your interpretation of the MSA?
14 A. I'm not sure what your question is that
15 you're asking now.
16 Q. I'm asking whether you can recollect, back
17 from December 1998, there being a way or a methodology
18 that was employed for newspaper print ads that you no
19 longer use principally because of the MSA?
20 A. Not -- no, there is not.
21 Q. Same question regarding billboards?
22 A. We have stopped advertising on billboards.
23 Q. Did you ever advertise tobacco products on
24 billboards?
25 A. Yes, we did.
26 Q. Did you share the cost of that advertising
27 expense with tobacco manufacturers?
28 A. No, we did not.

1 Q. Did they pay for --
2 A. No, they did not.
3 Q. Why did you advertise tobacco products if
4 they weren't paying for it?
5 A. To communicate availability and price to
6 consumers of tobacco products.
7 Q. As far as the categories of profit --
8 excuse me. As far as the categories of products are
9 concerned, is the profit margin or the profit amount for
10 cigarettes within the top 10 percent of any other
11 products that you sell?
12 A. Would you re-ask the question, please.
13 Q. Yes. In terms of either categories --
14 well, in terms of either profit margin or the amount of
15 profit that you make per, either, item or category, how
16 would you rank -- or would you rank cigarette products
17 as being in the top 10 percent of the categories that
18 you -- of products that you sell?
19 A. Yes, it is.

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20 Q. Has it always been that way?
21 A. Define what period of time you're talking
22 about, "always."
23 Q. Seven years.
24 A. Yes, it has.
25 Q. Was that an incentive to the company, to
26 advertise cigarette products?
27 A. What do you mean by "incentive"?
28 Q. Well, it seems to me if you have a product

1 that is -- makes you a lot of money, that you're going
2 to advertise that product if you're in business to make
3 money.
4 MR. FOSTER: That's not a question.
5 THE WITNESS: I'm sorry. That was a statement.
6 BY MR. McGUIRE:
7 Q. Well, that's what I meant.
8 A. Could you ask me a question then, please.
9 Q. Let's see. I said, was it an incentive to
10 the company to advertise cigarettes? You said, "What do
11 you mean by 'incentive,'" and I defined it. Now can you
12 answer the question: Was it an incentive to advertise
13 the company -- the cigarette products?
14 A. I'm still having difficulty understanding
15 what you mean by "incentive."
16 Q. Did you hope to profit monetarily from the
17 advertisement of cigarette products?
18 A. Yes.
19 Q. When did this practice stop, if it did
20 stop?
21 MR. FOSTER: Which practice?
22 THE WITNESS: Which practice?
23 BY MR. McGUIRE:
24 Q. The practice of advertising cigarette
25 products on billboards.
26 A. I believe it was right after the Master
27 Settlement Agreement was signed.
28 Q. And do you still advertise cigarette

1 products -- well, these advertisements that are part of
2 Exhibit 4002 -- does the -- do the tobacco manufacturers
3 pay you any money to include their product on your
4 advertisements?
5 A. No, they do not.
6 Q. Do they provide you with any mockup or
7 services related in marketing that makes it beneficial
8 for you to use their product over any other product?
9 A. May I qualify my last answer?
10 Q. Yes, you can, if you -- okay. Go ahead.
11 A. The -- you asked if the -- I believe you
12 asked if the tobacco companies paid anything towards the
13 advertisement. On some of these advertisements, there
14 are coupons, and some of those coupons could be used
15 during the buy-down period, at which time the tobacco
16 companies, if those brands were purchased at our
17 Circle K stores, they would reimburse us for that price
18 reduction if it was part of the regular promotion.
19 Q. Other than what you just described, did
20 the cigarette manufacturers provide you with any
21 financial contribution towards the cost of the
22 advertisements?
23 A. No.
24 Q. Any service contribution towards the cost

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25 of the advertisement? By that, I mean market research,
26 advertisement development, templates, access to
27 advertising agencies or distributors.
28 A. In these instances, the only thing we

1 would have received from the tobacco companies were
2 their logos; and to speak to each specific case in 4002,
3 I do not have direct knowledge if they did provide us
4 that -- those logos or not.
5 Q. Okay. Is it accurate to state that you
6 are using cigarette ads after December of 1998 for the
7 same reason you used them before, but using different
8 media?
9 A. Yes.
10 Q. Okay. Have we discussed, as far as you
11 can recollect, all of the various media that you do use
12 to advertise tobacco products?
13 A. The only other one that we might have --
14 we have used in the past -- and I can't recall how long
15 ago -- would be direct mail.
16 Q. Okay. Since you can't recall, are you
17 confident enough to tell me that it's before 1998?
18 A. It was before December of 1998, yes, I
19 believe so.
20 Q. Did you discontinue that type of marketing
21 because of -- Well, strike that.
22 Did you discontinue that type of
23 marketing?
24 A. We have not totally discontinued it. We
25 just haven't done it recently.
26 Q. As far as you're concerned, is there any
27 reason why you wouldn't --
28 A. No.

1 Q. -- direct mail?
2 A. No, there is not.
3 Q. So as far as you're concerned, there's no
4 prescription arising out of the MSA that would prevent
5 you from using direct mail as an advertising media for
6 tobacco products sold at your outlets?
7 A. As long as it was targeted to tobacco
8 smokers, is my understanding.
9 Q. How does one target to tobacco smokers as
10 opposed to general public?
11 A. We would work with the tobacco companies,
12 and we would provide them with the material, and they
13 would mail it out based on their list of consumers that
14 they are confident of that are tobacco smokers.
15 Q. Do you know where they get that
16 information from?
17 A. Not all of it, no, I do not.
18 Q. Are you relying on the tobacco companies
19 in this particular advertisement to make sure you're not
20 getting to groups that you wouldn't want to have this
21 advertisement --
22 A. Yes.
23 Q. -- minors?
24 A. Yes, we are.
25 Q. Have they presented you with any market
26 research which backs up or supports the way that they
27 use the information for direct mail? Either their
28 mailing list or how they configure the ad?

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A. You have asked me two questions.
Q. You're right. Let me go back a second.
A. Okay.
Q. On the direct mail advertising, do you do the mockup and present what it is that you want directly mailed?
A. Yes, we do.
Q. Okay. So no input from the cigarette companies?
A. They would have input. Again, as we worked together, they would have input, but it would be our decision and our mockup.
Q. Who does the research as to whether or not this particular way of presenting the message is going to find itself to smokers and influence smokers to react as opposed to minor smokers and/or nonsmokers?
A. I'm not -- I'm not clear on your question. The difficulty I am having is understanding the research portion of your question.
Q. It's my experience, having been in the advertising business at one point in my life, advertising in the U.S. Navy, if you believe that product, that research is important in determining how you design your advertising message, what you use, colors, alignment of print type, the underlying message, the obvious message. The media is the message. Is that your experience as well? That's what I meant by research.

A. In the creation of the advertising, I'm relying on my advertising group, working with the various agencies that we use, the PS Studios, as I testified before, or Daley & Associates, to provide us with the material that they think is readable by the consumer. I'm not aware of any specific research done to verify that that's the right type, font, or size.
Q. I just want to turn it around. Are you aware of any specific research that's done that is directed towards insuring that this message doesn't get communicated to the wrong group, nonsmokers, minor smokers?
A. I'm not aware of any research, no.
Q. Has such research been offered by anybody? Has anyone offered to do that for a cost?
A. No, they have not.
Q. Based on your experience, what would it cost to have such research performed on your own ads? And you can -- I'm sorry. Go ahead.
MR. FOSTER: I object. We're way beyond the scope of anything that's relevant to this lawsuit. This is not calculated to lead to admissible evidence. It calls for speculation. It's an incomplete hypothetical. I'm now going to instruct the witness not to answer and request that we get back to something that relates to this lawsuit, which is about the alleged failure to disclose the health hazards of environmental tobacco smoke.

MR. McGUIRE: Well, I disagree with you about what this lawsuit is about. It may have been about that, but it's no longer.
MR. FOSTER: Well, you know, I've got the Complaint in front of me. I've got Judge Prager's last

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6 ruling on the summary judgment in front of me.
7 Actually, I don't have that in front of me, but it's
8 obtainable. What is left in this lawsuit, per judge
9 Prager's order, is the alleged act of knowingly and
10 intentionally concealing and deception in the failure to
11 disclose that exposures of nonsmoking individuals to
12 tobacco smoke have been associated with other illnesses
13 and conditions. That's what this lawsuit is about
14 unless and until there's an amendment to the pleadings.
15 MR. McGUIRE: Read the fifth cause of action.
16 MR. FOSTER: I am reading the fifth cause of
17 action.
18 MR. McGUIRE: Okay. Well, I believe that
19 there -- what is fraudulent under 17200, what is unfair
20 under 17200, is much broader than what you have stated.
21 MR. FOSTER: Okay. Well, I'm quoting the
22 Complaint, and I will stand by what the Complaint says.
23 And my instruction stands, and my request that we move
24 on to something that's relevant stands.
25 MR. McGUIRE: Well, I'm not going to explain to
26 you why I think you're wrong.
27 MR. FOSTER: Okay. I'm not asking you to explain
28 it to me.

1 MR. McGUIRE: All right. I think this is
2 relevant, even under the limited description that you
3 hold as to what's at issue in this case. And complaints
4 are amended all the time, as you know, even after a
5 judgment, to conform to the proof.
6 MR. FOSTER: When this Complaint is amended, then
7 we will react accordingly.
8 MR. McGUIRE: Okay. Where were we? You have
9 instructed him not to answer questions having to do
10 with -- I have to go do this.
11 Q. We were talking about research done to
12 ensure that your advertising of cigarette products does
13 not reach the wrong group, nonsmokers and minor smokers.
14 After you're finished with your mockup and you direct
15 mail -- we're talking about now -- and you provide it to
16 the cigarette companies, do any changes that they make,
17 does that come back to you?
18 A. Yes, it would, if they did.
19 Q. Okay. We have talked about direct mail,
20 cigarette -- excuse me -- newspaper or print media
21 advertisements, billboards, radio and television. Is
22 there any other media that Circle K uses to advertise or
23 communicate the sale of tobacco products?
24 A. Yes.
25 Q. What else is there?
26 A. We were using store signage or in-store
27 signage.
28 Q. Is there anything else?

1 A. No.
2 Q. Does your in-store signage use tobacco
3 logos?
4 A. To the best of my recollection, no.
5 May I clarify that? We do. Yes, we do.
6 I'm sorry. We would have tobacco logos on.
7 Q. Is this information provided to you by the
8 tobacco companies?
9 A. Yes, it is.
10 Q. Can you give me a description as to what

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11 they provide you and what you add to it?
12 A. They would provide us with a sign made to
13 our specifications for placement on our cigarette
14 fixture that -- that would communicate a brand message,
15 and we would add a price to it.
16 Q. Have you ever rejected any brand messages
17 that would appear in that type of communication from the
18 company?
19 A. We would reject things that they might
20 want to place, yes.
21 Q. Would you be more specific?
22 A. If we didn't have the space to place
23 something or if it was not an approved location, we
24 would probably not approve it.
25 Q. How about the content of the message; have
26 you ever rejected the content?
27 A. It is likely, but I do not recall any
28 instances where we have.

1 Q. Have you ever rejected the content because
2 you were concerned that, by using it, you would either
3 be communicating to an audience that you did not want to
4 communicate to -- and I'll say minor smokers or
5 nonsmokers.
6 A. Not that I recall, no.
7 Q. Can you think of any reason why you would
8 have rejected or refused to place content -- or
9 messages, advertisements on the basis of content?
10 A. Would you ask the question again, please.
11 Q. Yes. Can you recollect or recall any
12 reason why you would have rejected or refused to place
13 an advertisement regarding tobacco products on the basis
14 of the content of the advertisement?
15 A. I can't recall any, no.
16 Q. 4003 --
17 MR. FOSTER: Yes.
18 MR. McGUIRE: -- for identification is from the
19 Tosco web site again. It's three pages.
20 (Plaintiffs' Exhibit No. 4003 was marked.)
21 BY MR. McGUIRE:
22 Q. And without reading it, would you just
23 kind of glance through it and, first, for foundational
24 purposes, tell me whether you have viewed this
25 information in the past, either read it in print form or
26 visited the web site and observed what they had to say
27 there?
28 A. I don't recall specifically seeing this

1 information.
2 Q. Okay. Do you know whether or not you sell
3 more than $2 billion in merchandise at Circle K on an
4 annual basis?
5 MR. FOSTER: I'm going to object. The witness is
6 not here to testify on that subject. It's not the modus
7 for the deposition. It is not relevant. It's unlikely
8 to lead to the discovery of admissible evidence. I will
9 instruct him not to answer.
10 BY MR. McGUIRE:
11 Q. How many retail outlets do you have in the
12 United States?
13 MR. FOSTER: Same instruction.
14 BY MR. McGUIRE:
15 Q. How many of the retail outlets that you

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16 have are company-owned as opposed to operated by
17 franchisees?
18 MR. FOSTER: Same instruction.
19 BY MR. McGUIRE:
20 Q. For how many years has Circle K been the
21 official convenient store of NASCAR?
22 MR. FOSTER: Same instruction.
23 BY MR. McGUIRE:
24 Q. Have you ever handed out to customers
25 cigarette packs that contain less than 20 cigarettes?
26 A. Would you repeat the question there,
27 please.
28 Q. Yeah. Have you ever distributed to

1 customers cigarettes in packages that contain less than
2 20 cigarettes?
3 MR. FOSTER: I'm going to object on the basis
4 that it's not relevant and not likely to lead to the
5 discovery of admissible evidence. I will let him answer
6 this question and see where it goes.
7 THE WITNESS: Yes, we have.
8 BY MR. McGUIRE:
9 Q. When was the last time you were aware of
10 doing that?
11 A. To the best of my recollection, it is over
12 several years ago.
13 Q. When did the practice -- why did the
14 practice cease?
15 A. I do not specifically recall.
16 Q. Do you know whether such a practice is
17 prohibited by the MSA?
18 A. To the best of my recollection, the MSA
19 states that you cannot sell -- the manufacturer may not
20 produce cigarettes in less than 20 in a pack for some
21 period of time, which I'm not entirely sure what the
22 time frame of that is.
23 Q. The Request for Admissions that were
24 served on Circle K had a series of questions that I
25 think we have covered somewhat. They go from Exhibit --
26 or Admission Question No. 179 through 186 that have to
27 do with -- admit that you believe that parents should
28 not smoke around children. And you denied that request.

1 And the answer to the interrogatory that
2 you signed under penalty of perjury as to why you denied
3 that request was that defendant has no policy and has
4 taken no formal action that would constitute a belief
5 within the meaning of this request.
6 I know that these answers are prepared by
7 your counsel. That's a permitted practice, and that's
8 why we do it. But I would like you to explain to me, if
9 you could, what you mean by you have no policy regarding
10 whether or not parents should smoke around young
11 children. By "you," I mean, I'm talking about the
12 corporate you in the biggest or smallest sense, whatever
13 you're comfortable speaking for.
14 A. I mean, if I understand correctly, you're
15 asking me about a policy that we don't have, which I
16 really can't answer the question to. We don't have a
17 policy.
18 Q. Why don't you have a policy?
19 MR. FOSTER: I'm going to object that the
20 question is argumentative. You can go ahead and wrestle

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21 with it.
22 THE WITNESS: I have a tough time. There's
23 probably a number of things we might not have policies
24 for. It really goes beyond the bounds of selling a
25 legal product.
26 BY MR. McGUIRE:
27 Q. Do you agree that not having a policy on
28 smoking around children, exposing infants to high

1 concentrations of tobacco smoke, minimizing children's
2 exposure to ETS, and intending nonsmokers to be exposed
3 to ETS is inconsistent with the community relations
4 policies expressed in Exhibit 4000?
5 MR. FOSTER: Objection. The question is
6 argumentative. It's irrelevant. It's not likely to
7 lead to the discovery of admissible evidence. His
8 personal beliefs are not germane to this lawsuit, and
9 he's not been designated on behalf of the corporation to
10 address issues such as that. I will instruct him not to
11 answer.
12 BY MR. McGUIRE:
13 Q. Let me rephrase it a little bit.
14 Is there an inconsistency between the
15 policies and beliefs expressed in Exhibit 4000, the
16 answers to the Request for Admissions and
17 Interrogatories that I just referred to previously about
18 smoking, children --
19 MR. FOSTER: I don't see that cures the
20 objection. It still stands, and the same instruction
21 stands.
22 BY MR. McGUIRE:
23 Q. Based on your position with Circle K,
24 would you know, one way or the other, whether the
25 superiors ever considered a policy regarding ETS and
26 warning regarding ETS?
27 A. If they were aware, I would know.
28 Q. So someone would have to actively make you

1 aware of this. Is that right?
2 A. Make me aware of what?
3 Q. That "We have discussed this, and we have
4 decided we're not going to have a policy"?
5 A. No, they would not necessarily need to do
6 that, no.
7 Q. So as far as you know, there could have
8 been discussions about whether we have a policy or we
9 don't have a policy. And whatever they chose to do,
10 having one or not, the reasons for not having one could
11 have been discussed, and you wouldn't know any of this.
12 Is that right?
13 MR. FOSTER: You know, I'm going to object,
14 Counsel. He's here speaking as the corporation, not as
15 an individual.
16 MR. McGUIRE: I know. I'm asking the
17 corporation.
18 MR. FOSTER: You're asking him -- well, in the
19 context of asking him as the corporation, the question
20 doesn't make any sense. It's vague and ambiguous and,
21 in fact, nonsensical, and I will instruct him not to
22 answer.
23 BY MR. McGUIRE:
24 Q. Before coming here today, when you
25 discussed this deposition with the two gentlemen that

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you identified earlier -- I forget their names again. Why don't you just refresh my memory.

A. I mentioned a number of names. Who are

you specifically speaking of? Circle K employees or the Philip Morris employees or --

Q. No. These were, I think, Circle K employees. Let me ask you. Did you talk to Philip Morris employees before coming here today?

A. No, I did not -- oh, I need to -- Yes, I did talk to a Philip Morris employee before I came here today.

Q. Who?

A. My wife.

Q. What did you discuss with her?

A. I just told her I was going to a deposition.

Q. Okay. Getting -- anything else?

A. No. And then the two gentlemen, I think you were referring to, were Jim McKenna and -- excuse me -- Mark Harper.

Q. Mark --

A. -- Harper, H-a-r-p-e-r.

Q. Let's take Mr. McKenna. Where did that conversation or conversations take place?

A. In his office.

Q. When?

A. Last Thursday or Friday.

Q. How long did it last?

A. It was part of a -- several objective discussions on a couple of things that I needed to review in addition to this. So it was part of a -- I

believe an hour conversation.

Q. You said several objective discussions. What do you mean by that?

A. We had several things to discuss aside from this deposition such as fountain soft drink program --

MR. FOSTER: You don't need to tell him everything you talked about.

THE WITNESS: Okay.

BY MR. McGUIRE:

Q. Of the hour discussion that you had with Mr. McKenna, how much time did you spend on anything at all related to this deposition?

A. Less than five minutes.

Q. Was anyone else a witness to this discussion?

A. No.

Q. What did he say, and what did you say in substance?

A. I explained to him that I was going to a deposition on a lawsuit in California and said that I had been working with inside counsel on preparing materials for that, and that was the extent of it.

Q. Did Mr. McKenna appear to know about this lawsuit?

A. No, he did not.

Q. Did you tell him what the lawsuit was about?

A. Only in the context as I just previously

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2 explained to you.
3 Q. You said there was a lawsuit in
4 California. He didn't say, "What kind of lawsuit?"
5 A. I told him it was a tobacco lawsuit. That
6 was all.
7 Q. How many tobacco lawsuits are you involved
8 in, is Circle K involved in?
9 MR. FOSTER: Go ahead.
10 THE WITNESS: I'm not sure I know that.
11 BY MR. McGUIRE:
12 Q. Hmm?
13 A. I'm not sure on the number.
14 Q. Give me what you know.
15 A. There was one other smokeless tobacco in
16 San Diego that I believe has been settled, and -- I'm
17 recalling one other, but I can't pinpoint it. So --
18 Q. So you can think of only two lawsuits that
19 Circle K has been involved in, involving tobacco?
20 A. In the State of California?
21 Q. Anywhere, anytime, anyhow.
22 A. There's others in -- there was others in
23 Arizona. I'm not sure what stage those are at. I know
24 I'm aware of one -- Tucson.
25 MR. FOSTER: Finish your answer.
26 THE WITNESS: That was dismissed due to a
27 fraudulent claim by the plaintiff, but --
28 //

1 BY MR. McGUIRE:
2 Q. So you can only think of three; one
3 smokeless tobacco, San Diego, one other one, one in
4 Arizona.
5 A. There might be -- I believe there's been
6 several others in Arizona. I'm not exactly sure on the
7 number.
8 Q. Do you, from time to time, get together
9 with other retailers to discuss tobacco litigation?
10 A. No, I do not.
11 Q. Do you know if any other employees of the
12 company do that?
13 A. No, not that I am aware of, no.
14 Q. The smokeless tobacco case in San Diego,
15 do you know the caption or who the plaintiff was?
16 A. It was in San Francisco, and, no, I do not
17 recall.
18 Q. You said it was settled?
19 A. To the best of my knowledge, yes, it was.
20 Q. Do you know if there was any
21 confidentiality attached to the settlement?
22 A. I do not know.
23 Q. Were other retailers named in the
24 smokeless tobacco case in San Francisco?
25 MR. FOSTER: I'm going to object now and instruct
26 the witness not to answer any more questions on this
27 subject. It's not a proper subject of this deposition.
28 It was not noticed for this deposition. Plus it's quite

1 irrelevant and unlikely to lead to the discovery of
2 admissible evidence.
3 BY MR. McGUIRE:
4 Q. Did this other lawsuit, did that
5 involve -- this other one that you talked about, did
6 that involve selling tobacco products?

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7 A. Which one specifically are you talking
8 about?
9 Q. You said, "I'm aware of one smokeless
10 tobacco one, one other one," and then you talked about
11 the one in Arizona.
12 A. The one in Arizona, I recall, was in
13 regard to selling tobacco, yes.
14 Q. Okay. The other one that was not in
15 Arizona.
16 A. I don't recall specifically what it
17 related to.
18 Q. Did you testify in any of these cases?
19 A. None of those cases have gone to trial.
20 Q. Did you give a deposition?
21 A. I have not given a deposition.
22 Q. Did you prepare a declaration or a sworn
23 statement, a statement that you swore under the penalty
24 of perjury, that whatever was in the declaration was
25 true and correct?
26 A. I'm going to need some help on that,
27 because I believe I have.
28 Q. Okay. I'll be happy to help you. Did you

1 answer interrogatories or request for admissions, like
2 you did in this case, in these other cases where you
3 were asked questions, and you swore under oath that
4 certain things were true or not?
5 MR. FOSTER: I'm going to object and instruct the
6 witness not to answer. He's here to testify wearing the
7 corporate hat of the items that have been itemized in
8 this deposition, which does not include the subject at
9 hand.
10 BY MR. McGUIRE:
11 Q. Did you review any documents in order to
12 prepare yourself for this deposition today?
13 A. Yes, I did.
14 Q. When did that preparation begin?
15 A. Soon after the original motion was filed.
16 Q. Did you review the Complaint?
17 A. Awhile ago, yes, I did.
18 Q. Did you review any of the motions?
19 A. I do not recall. I'm not -- you're
20 starting to speak into legal terms and forms that I'm
21 not fully familiar with.
22 Q. Okay. So I take it, from your answer,
23 that you could have, but you just don't know what a
24 motion is.
25 A. That is possible, yes.
26 Q. Okay. Let me try and ask the question
27 this way in fairness to you. Did you review documents
28 that you understood to be papers prepared by lawyers as

1 part of the litigation in preparation for your
2 deposition?
3 A. Yes, I did. The documents I signed, I
4 reviewed.
5 Q. Any other documents?
6 A. There was a document that talked to a
7 specific number of questions that I think you have
8 restated that I also reviewed.
9 Q. Okay. Anything else? Legal documents
10 now.
11 A. It is possible there's some others that

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12 I'm not aware of.
13 Q. Okay. Do you know what a deposition looks
14 like?
15 A. I don't --
16 Q. A transcript of a deposition?
17 A. I don't have a full recollection of one
18 now.
19 Q. You have had three depositions. This will
20 be No. 4, correct?
21 A. Mm-hmm.
22 Q. "Yes"?
23 A. I'm sorry. Yes.
24 Q. When this proceeding is over, the court
25 reporter will transcribe what we have said into a
26 booklet, and you will get it back to review, and it will
27 be on line numbered pages. Have you reviewed or did you
28 review any documents like that in preparation for your

1 deposition?
2 A. No, I did not.
3 Q. Okay. Other than legal documents, did you
4 review anything else in preparation for your deposition?
5 A. Yes, I did.
6 Q. Did you review any correspondence,
7 memorandums between companies, employees, in preparation
8 for your deposition?
9 A. I didn't specifically review them. I
10 pulled some information together though, yes.
11 Q. What's the difference in your mind between
12 reviewing a document and pulling some information
13 together from them?
14 A. Reviewing would be re-reading it and
15 making notes about it. Putting information together is
16 just taking files and making copies of them.
17 Q. And what files did you make copies of in
18 preparation for your deposition?
19 A. I made copies of my information about our
20 new back bar program, copies of the display allowance
21 and promotional agreements with the tobacco companies,
22 and some memorandums to store employees on our -- or to
23 region management on our cigarette program.
24 MR. McGUIRE: We will request that those be
25 produced at your earliest convenience and without any
26 other formal request, if that's appropriate. If you
27 require, we will be more formal.
28 MR. FOSTER: Actually, those were the subject of

1 the request appended to the deposition notice and also
2 the subject of our objections to the deposition notice.
3 And having reviewed the documents concerning the back
4 bar program and the display agreements with the
5 manufacturers, we determined that they're irrelevant and
6 not calculated to lead to admissible evidence, and I am
7 prepared, and have been prepared, and started to have
8 some foundational concern with the nature of the
9 contractual -- what they obligated Circle K to do and
10 the benefits that inured to Circle K.
11 And I'm prepared to allow further inquiry
12 on a foundational basis so that you can satisfy yourself
13 that those have nothing to do with smoking and health
14 issues. And beyond that, that documentation and these
15 issues are not germane to the lawsuit.
16 MR. McGUIRE: We want the documents, if on no

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basis alone, that the witness reviewed them in preparation for his deposition.

MR. FOSTER: He didn't say he reviewed them. He said he collected them.

MR. McGUIRE: Well, we went through this, as to what he meant by that, and I'm satisfied there's enough foundation. I'm satisfied that these are all likely to lead to the discovery of admissible evidence. So we will make a motion.

MR. FOSTER: Okay.

MR. McGUIRE: We will ask this witness to come back when we're finished making that motion.

Q. Have you been asked by -- the company been asked to support any lobbying programs that are initiated or in existence for the benefit of tobacco manufacturers?

MR. FOSTER: I'm also going to object to this line of inquiry as we did in our objections to the notice of deposition on the basis that the subject is irrelevant and not calculated to lead to the discovery of admissible evidence, and that the activities that are the subject of the inquiry are privileged and cannot conceivably form the basis of any liability.

So I will allow a little bit of foundational inquiry into the area, and then I'm going to truncate it. So you can answer the question as it's been framed.

THE WITNESS: Would you repeat the question, please.

BY MR. McGUIRE:

Q. Has the company been asked to support any lobbying programs that are initiated or in existence for the benefit of tobacco manufacturers?

A. Not that I am aware of, no.

Q. If the company were involved in supporting such programs, is that something that you would be aware of in the normal course of things?

A. Yes, I would.

Q. Is the company involved in any other kind of lobbying programs that you are aware of?

MR. FOSTER: Well, pertaining to tobacco or going beyond that?

MR. McGUIRE: Well, first, I want to lay a foundation that this gentleman would know.

MR. FOSTER: I'm not going to allow him to answer any questions about any lobbying or other kinds of activities that don't specifically relate to tobacco.

MR. McGUIRE: Well, Brian, I have to lay a foundation. If they relate it to tobacco, he would know about it, because he knows about all the other lobbying. I'm not going to go any further --

MR. FOSTER: I don't mind you asking that question.

MR. McGUIRE: That's what I did ask, I thought.

MR. FOSTER: I don't think so, but let's not quarrel.

BY MR. McGUIRE:

Q. Very good. Let me rephrase the question.

Are you aware of any other -- of any programs that the company is involved in where the goal of the program is to lobby members of either a state or

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22 a federal agency or government?
23 A. I need to -- I need to ask my counsel a
24 question, if that's possible.
25 Q. Sure.
26 (A recess was taken.)
27 THE WITNESS: Would you re-ask the question?
28 //

1 BY MR. McGUIRE:
2 Q. Are you aware of any programs that the
3 company is involved in where the goal or objective of
4 the program is to lobby members of either a state or a
5 federal agency or government?
6 A. No, I'm not aware of any.
7 Q. Does the company have a lobbyist?
8 A. Not that I am aware of, no.
9 Q. You took some time to answer that. Why
10 was that such a tricky question?
11 A. It wasn't a tricky question. I was just
12 trying to make sure that I understood the question.
13 Q. When I use the word "lobbyist," what do
14 you understand that to mean?
15 A. When you asked the question if we had a
16 lobbyist, a lobbyist to me would be someone that we
17 would employ that would, quote, unquote, "lobby" a
18 governing body.
19 Q. Or members of a government body?
20 A. Or members of a government body.
21 Q. When you say, "lobby," what do you mean?
22 A. It would be to, on our behalf, meet with
23 them, present our position on a particular subject.
24 Q. Circle K, to your knowledge, has never
25 presented their position on any subjects to any members
26 of Congress. Is that correct?
27 A. Relating to what specifically?
28 Q. Anything. In your position.

1 A. Yes, we have.
2 Q. And same question having to do with any
3 agency of the federal government.
4 A. Yes, we have.
5 Q. Food and Drug Administration, the Tobacco
6 and Firearms Administration, the EPA.
7 A. We have had a meeting with the BATF and
8 the Customs Department.
9 Q. Did you participate in that meeting?
10 A. Yes, I did.
11 Q. Both meetings?
12 A. It was the same time.
13 Q. What was the subject matter of that
14 meeting?
15 A. Gray market tobacco products.
16 Q. What do you mean by gray market tobacco
17 products?
18 A. Products that are specifically packaged
19 for sale outside of the United States that may be
20 exported and then brought back in.
21 Q. Had you been selling those products before
22 the meeting?
23 A. No, we had not.
24 Q. Were you interested in selling the
25 products, and that was the reason for the meeting?
26 A. No, we were not.

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Q. What was the purpose of the meeting?
A. We were -- as part of the Master

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Settlement Agreement, states had to pass legislation that prohibited the sale of gray market tobacco products in their state, and there was some concern on how the BATF and the Customs Department were going to be able to enforce that because they weren't giving any other resources to do that. So we were trying to understand specifically what the BATF and Customs Department were going to do after January 1st, 2000, as part of the new federal excise tax.
Q. Have you ever supported a lobbyist in terms of monetary support for any other industry, specifically, the cigarette manufacturers?
A. Not that I am aware of, no.
Q. Has Tosco?
A. Not that I am --
MR. FOSTER: Objection. Don't answer that.
BY MR. McGUIRE:
Q. As far as you know, is there a lobbyist that has registered under Tosco's name in Washington, D.C.?
MR. FOSTER: Objection. Not relevant, not calculated to lead to the discovery of admissible evidence. You don't need to answer that.
BY MR. McGUIRE:
Q. Does Tosco control Circle K?
MR. FOSTER: Same objection. He's not here today to testify as to the relationship between Tosco and Circle K.

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MR. McGUIRE: I respectfully disagree.
MR. FOSTER: Well, if you can find it in your notice of deposition, then I will reconsider my position.
MR. McGUIRE: I'm not going to argue with you.
MR. FOSTER: Okay.
BY MR. McGUIRE:
Q. Are there any members of the Board of Directors of Tosco that are also members of the Board of Directors of either Tosco Marketing or Circle K?
MR. FOSTER: Same objection. Same instruction.
BY MR. McGUIRE:
Q. In the beginning of your deposition, you indicated that you had been deposed three times. We talked about one of those cases. What were the other two?
A. The other two were related to franchisees at 7-11 and marketing programs.
Q. Has anyone at Circle K objected to any of the information that Tosco put on their web site regarding Circle K?
MR. FOSTER: I'm going to object on the basis that that's not a proper subject for this deposition today. I'm going to instruct him not to answer.
BY MR. McGUIRE:
Q. You are an officer of Tosco Marketing Company; is that correct?
A. No, I am not.

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Q. What did you tell me your position was?
A. Assistant vice-president in the field and

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3 category market.
4 Q. Sounds like an officer. What do you
5 understand an officer to mean when I ask that question?
6 A. That I would -- As an officer, I would
7 most likely be on the Board of Directors.
8 Q. No, that's a director.
9 A. Okay.
10 Q. So if I take away the director and I
11 explain to you that I don't mean director, I mean
12 officer or director, you are an officer of Tosco
13 Marketing; correct?
14 A. I do not believe I'm an officer of the
15 corporation.
16 Q. What is the basis of your belief?
17 A. I have not been informed that I'm an
18 officer of the corporation by anybody. I have not
19 signed any documents saying that I'm an officer of the
20 corporation.
21 Q. But you have the title vice-president,
22 right?
23 MR. FOSTER: Objection. His position with Tosco
24 is not relevant. It's not going to lead to the
25 discovery of admissible evidence. It's not been noticed
26 for this deposition. And I will instruct him not to
27 answer any more questions about it.
28 MR. McGUIRE: We're almost done. 4004 for

1 identification is entitled Introduction to
2 Proposition 65, a Summary of Law and Update on
3 Legislative and Court Developments prepared by Andre V.
4 Tolpegin, T-o-l-p-e-g-i-n, of the law firm Ropers,
5 Majeski, Kohn & Bentley.
6 (Plaintiffs' Exhibit No. 4004 was marked.)
7 BY MR. McGUIRE:
8 Q. Have you seen that document before?
9 A. I do not recall seeing this document
10 before.
11 MR. McGUIRE: My information, Brian, is that that
12 was produced --
13 MR. FOSTER: That's correct.
14 MR. McGUIRE: -- by this company?
15 MR. FOSTER: That's correct.
16 BY MR. McGUIRE:
17 Q. Okay. Did you ever attend a conference or
18 a seminar regarding Prop. 65 produced or presented by
19 that law firm?
20 MR. FOSTER: You know, I'm going to allow a
21 little bit of foundational inquiry to see where it goes,
22 but Proposition 65 is not in this lawsuit anymore. And
23 any inquiry into Proposition 65 and this company's
24 knowledge of its obligation or efforts to comply with
25 its obligations under Proposition 65 are neither
26 relevant or calculated to lead to the discovery of
27 admissible evidence. So with that objection, I will let
28 you answer this question. I will see where it goes, and

1 then take a position.
2 BY MR. McGUIRE:
3 Q. As a foundational item, does Circle K post
4 Prop. 65 warnings in its establishments?
5 A. What do you mean specifically by "Prop. 65
6 warnings"?
7 Q. Warnings that the company believes are

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Source: https://www.industrydocuments.ucsf.edu/docs/qqfl0001

8 required by Prop. 65.
9 A. There is some -- there is some information
10 in the stores, yes.
11 Q. Now, back to this particular document, you
12 don't recollect it?
13 A. No.
14 Q. Did you participate in the seminar or a
15 seminar?
16 A. I do not recall ever attending a seminar
17 in regards to this.
18 Q. Did you locate this document for purposes
19 of producing it at some point in time?
20 A. I did not, no.
21 Q. Do you know who probably would have been
22 the person who would have had custody of that document
23 and would have turned it over?
24 MR. FOSTER: I don't want you to speculate.
25 THE WITNESS: I have no idea. I don't have
26 knowledge to that.
27 BY MR. McGUIRE:
28 Q. Can you tell me the number of tobacco

1 products that were sold in Circle K stores annually
2 since July of 1994?
3 MR. FOSTER: I'm going to object. That is not a
4 subject that was noticed for this deposition.
5 MR. McGUIRE: I know, but you promised that you
6 would give us this information after the demurrer
7 hearing, which is quite some time ago, and we haven't
8 gotten it.
9 MR. FOSTER: No, we didn't. The --
10 MR. McGUIRE: Well, if there's an explanation,
11 let's do it off the record.
12 MR. FOSTER: Okay. I will instruct him not to
13 answer.
14 MR. McGUIRE: All right.
15 Q. I do want to talk to you about that; so
16 let's put that over there.
17 Have you ever participated in
18 question-and-answer meetings with cigarette
19 manufacturers regarding risks of smoking or risks of
20 secondhand smoke?
21 A. No, I have not.
22 Q. Have you ever been invited to participate
23 in such gatherings?
24 A. No, I have not.
25 Q. Has anyone from the company participated
26 in such gatherings to your knowledge?
27 A. Not that I am aware of, no.
28 Q. Is there any reason why you wouldn't be

1 aware of such things if they did happen?
2 A. It is possible, yes.
3 Q. But is there a reason? I understand that
4 it may be possible, but is there some reason that you
5 know of, because of what you know about how the company
6 is organized, that such meetings and communications
7 could go on, but you wouldn't know about them, because
8 you do something totally different and -- or as they
9 say, out of the loop?
10 A. Would you re-ask the question?
11 MR. FOSTER: Are you asking him if such meetings
12 took place, he would likely know about it?

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13 BY MR. McGUIRE:
14 Q. I'm asking him -- let me -- Explain to me
15 what you meant by your answer, "It is possible, yes."
16 A. What question did I answer that way?
17 Q. "Is there any reason why you wouldn't be
18 aware of such things if they did happen?"
19 Yes, "It is possible, yes."
20 A. It is possible somebody -- somebody could
21 have gone to a meeting and not informed me. That's not
22 standard procedure though.
23 Q. Is there a procedure that says that
24 anybody meeting with tobacco companies has to make sure
25 that John knows about it so he could tell Mickey at his
26 deposition?
27 A. No. The policy is anybody who travels to
28 a meeting outside of regular company store business

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1 needs to get approval, whether it be tobacco or soft
2 drinks or any meeting like that.
3 Q. How many meetings do you have with any of
4 your tobacco customers a year?
5 A. I don't have tobacco customers' meetings.
6 Q. I thought you told me that there were
7 meetings that you have attended with R.J. Reynolds --
8 and there may have been other manufacturers -- where you
9 talked about marketing. You talked about different
10 ideas that they had and different ideas you had. That's
11 the kind of meetings I'm talking about.
12 A. Okay. You said, "customer." You didn't
13 say "supplier." I'm sorry.
14 Q. Oh, okay. I'm sorry. Supplier.
15 A. They come up as the need comes up.
16 There's Philip Morris. There's typically two meetings a
17 year where they review industry information. R.J.
18 Reynolds and the other tobacco companies, it would be as
19 new products come up, as new information is available
20 about a product they might be introducing, new
21 promotional programs. So those would come up from time
22 to time, and they're not really scheduled.
23 Q. How do you know about them?
24 A. They would call us and say, "We want to
25 come in and talk to you about a new program," and we
26 would set up a time and sit down and talk about it.
27 Q. Are you ever invited to come to someplace?
28 A. Yes.

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1 Q. The last couple of years, where have you
2 gone to meet with them?
3 A. New York and Winston, Salem.
4 Q. Did they pay your way?
5 A. Part of it, yes.
6 Q. Do these involve convention type meetings,
7 large groups of people, programs going on at the same
8 time, dinners?
9 A. Yes.
10 Q. Do the tobacco companies provide the
11 retailers with any awards or recognition for
12 productivity in the sale of cigarettes?
13 A. Not that I am aware of, no.
14 Q. Do they provide any monetary bonuses or
15 incentives that you are aware of to employees of other
16 companies because -- that arise out of or have to do
17 with the sale of cigarettes?

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18 A. Other than the promotional programs, no,
19 I'm not aware of any others, with the exception of last
20 week, I saw in a trade magazine, Reynolds presented an
21 award to a retailer, a little plaque.
22 Q. Have you been at any of these
23 presentations where you have looked at the schedule of
24 events, and that schedule includes educational programs
25 on tobacco and its risks or lack thereof?
26 A. No, I have not seen anything like that.
27 Q. How old is Joe Camel?
28 A. I have no idea.

1 Q. Is there any prescription that you are
2 aware of in the State of California that prevents a
3 minor from advertising tobacco products?
4 A. I don't understand your question when you
5 say "prescription."
6 Q. Is it against the law to use a minor to
7 advertise tobacco?
8 MR. FOSTER: If that's a serious question, I'm
9 going to object on the basis that it falls outside the
10 scope of what was noticed for this deposition, and he
11 doesn't have the expertise or knowledge to opine as to
12 California law.
13 BY MR. McGUIRE:
14 Q. The warnings that you do provide in your
15 stores, are they multilingual?
16 MR. FOSTER: Proposition 65 warnings, we're
17 talking about?
18 MR. McGUIRE: Whatever warnings. Surgeon General
19 warnings, Prop. 99 warnings, Prop. 10 warnings.
20 THE WITNESS: I'm not familiar with Prop. 99 and
21 Prop. 10. To the best of my knowledge, prop -- the
22 Surgeon General warnings are in English. I do not
23 recall if they're in Spanish or not.
24 BY MR. McGUIRE:
25 Q. If the law doesn't require you to put the
26 warning in the language of the predominant customer, do
27 you do it?
28 A. Would ask the question again, please.

1 Q. Yeah, I'll try. If the warning is not in
2 the predominant language of your -- excuse me.
3 If the warning is not in the language of
4 your predominant customer at any particular retail or
5 retail area, does the company translate the warning and
6 put it in the language of the predominant customer?
7 A. Not that I am aware of, no.
8 Q. Have you determined whether or not there's
9 any correlation between shoplifting, age, and tobacco
10 products in your stores?
11 MR. FOSTER: I will object on the basis that that
12 is not a noticed subject for this deposition. It's
13 irrelevant, and it's not calculated to lead to the
14 discovery of admissible evidence. I will instruct the
15 witness not to answer.
16 BY MR. McGUIRE:
17 Q. I think I'm done. I will talk to you
18 about that later.
19 Why don't we take five minutes, and I can
20 go through this stuff and confirm that I have nothing
21 else to ask.
22 (A recess was taken.)

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MR. FOSTER: The original of the transcript should come to me. I will get it to Mr. Zikias for review and for signature under the penalty of perjury. We will cause that to happen within 30 days' time. In the meantime, we agree that an unsigned copy of the transcript can be used to support any motion practice

that one of the parties undertakes. Anything else, Mickey?

MR. McGUIRE: You don't have a standard stipulation, right?

MR. FOSTER: No, of course, we don't. This is the first deposition you guys have taken, or at least of the retailers.

MR. McGUIRE: I mean, nothing has been adopted in the -- for the rest of the suit?

MR. FOSTER: No. If there is, I don't know about it.

MR. McGUIRE: Okay. Let me just see. That's acceptable. Thank you.

THE REPORTER: Off the record?

MR. FOSTER: Off the record.

(Whereupon, the deposition was adjourned at 2:40 p.m.)

* * * * *

I hereby declare under penalty of perjury that the foregoing is my deposition under oath; that these are the questions asked of me and my answers thereto; that I have read my deposition and have made the necessary corrections, additions, or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this day of_____,_____.

_____

JOHN ZIKIAS

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STATE OF CALIFORNIA)
:SS
COUNTY OF SAN DIEGO)

I, Cynthia Depweg, CSR NO. 3280, hereby certify that I reported in shorthand the above proceedings on Tuesday, April 25, 2000, at 2550 Fifth Avenue, Ninth Floor, in the City of San Diego, County of San Diego, State of California; and I do further certify that the above and foregoing pages, numbered from 4 through 150, inclusive, contain a true and correct transcript of all of said proceedings.

It was stipulated that the original deposition be delivered to Mr. Foster for the purpose of having the witness read, correct, and sign the deposition under the penalty of perjury; said original thereafter to be maintained by Mr. Foster until the time of trial.

Dated: May 8, 2000.

_____
CYNTHIA DEPWEG
CSR NO. 3280

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